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Sixth Edition

CRIMINAL
[CRIMJIG]

Chapters 17–End

2022–2023 Supplement

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Prepared by the

MINNESOTA DISTRICT JUDGES ASSOCIATION
COMMITTEE ON CRIMINAL JURY
INSTRUCTION GUIDES

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2022–2023 SUPPLEMENT HIGHLIGHTS

The 2022–2023 supplement to the Sixth Edition of the Criminal Jury Instruction Guides includes a number of significant changes and updates:

- The Criminal Sexual Conduct JIGs were amended to incorporate new statutory definitions of "force," "coercion," and "mentally incapacitated," effective September 15, 2021, and to reflect structural changes to the criminal sexual conduct statutes, which separated adult-victim from child-victim crimes. Separate JIGs are provided for before and after the effective date of the legislation where substantive changes were enacted.
- Consistent with the HRO Violation jury instruction, the JIG for OFP and DANCO Violations was amended to add a necessary element—that the defendant knew all the facts that made the defendant's conduct a violation of the court order—as required by the decision in *State v. Andersen*, 946 N.W.2d 627 (Minn. Ct. App. 2020).
- The Threats of Violence JIG was amended to define "reckless disregard of the risk of causing terror" per the decision in *State v. Mrozinski*, 971 N.W.2d 233 (Minn. 2022).
- Legislative amendments were incorporated into the JIGs for Predatory Offender Registration, Drive-By Shooting, and Abuse of a Vulnerable Adult.
- New JIGs were created for Nonconsensual Dissemination of Private Sexual Images and the newly-enacted crime of Child Torture.
- A new JIG was created to accompany the use of a transcript of audio or video evidence per the guidelines set forth in *State v. Olkon*, 299 N.W.2d 89 (Minn. 1980).
- The Attempt JIG was amended for clarity and ease of use, and separate JIGS were created for Attempted Murder in the First and Second Degrees.

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The Committee would like to provide a special thanks to Theresa Crunk, staff attorney with the Fourth Judicial District, as well as Sarah Metropulos and Merit Stewart, law clerks to the Honorable Hilary Lindell Caligiuri, for their contributions in helping the Committee prepare this 2022–2023 Supplement to the Minnesota Criminal Jury Instruction Guides.

PREFACE

This supplement to the Minnesota Jury Instruction Guides—Criminal (CRIMJIG), Sixth Edition, has been prepared by the Minnesota District Judges Association Committee on Criminal Jury Instructions, Jonathan M. Hoffmann, Esq., Reporter. It reflects current case law of the Minnesota Supreme Court and the Minnesota Court of Appeals and current legislation through June 2022.

Jonathan M. Hoffmann
Reporter
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CHAPTER 17

BURGLARY

CRIMJIG 17.02

BURGLARY IN THE FIRST DEGREE—OCCUPIED DWELLING—ELEMENTS

n. 1.

Replace Footnote one with the following text:

A "building" is a structure suitable for affording shelter for human beings, including any adjacent, appurtenant, or connected structure. Minn. Stat. § 609.581, subds. 2 and 3. *See also State v. Lopez*, 908 N.W.2d 334 (Minn. 2018) (holding a hotel guest commits a burglary when he or she enters another guest's room without consent and commits a theft in that room).

CRIMJIG 17.03

BURGLARY IN THE FIRST DEGREE—WEAPON—ELEMENTS

Replace the current Jury Instruction and Comments with the following text and Comments:

The elements of this crime are:

First, the defendant (entered a building without the consent of the person in lawful possession) (entered a building by using artifice, trick, or misrepresentation to obtain consent to enter from the person in lawful possession) (remained within a building without consent of the person in lawful possession). [The entry does not have to have been made by force or by breaking in. Entry through an open or unlocked door or window is sufficient.] [Whoever enters a building while open to the general public does so with consent, except when consent was expressly withdrawn before entry.] [The defendant need not have entered the building without the consent of the person in lawful possession, nor does it matter whether the person knows of the defendant's remaining, so long as that person does not consent to the defendant's remaining in the building.]

> **"Building" means a structure suitable for affording shelter for human beings including any appurtenant or connected structure.**[1]
>
> **A person is in lawful possession when the person owns the building or has been given the right to control or occupy the building by the owner. Such a person may be in lawful possession of the building, although the person is not physically present at the time of the entry.**[2]

[1] Second, the defendant possessed a dangerous weapon or an explosive when entering or at any time while in the building.[3]

"A dangerous weapon" means any firearm, whether

loaded or unloaded, or any device designed as a weapon and capable of producing death or great bodily harm, any combustible or flammable liquid or other device or instrumentality that, in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm, or any fire that is used to produce death or great bodily harm.[4]

"Great bodily harm" means bodily harm that creates a high probability of death, causes serious permanent disfigurement, or causes a permanent or protracted loss or impairment of the function of any part of the body, or other serious bodily harm.[5]

[2] Second, the defendant possessed an article used or fashioned in a manner to lead (another person) (________) to reasonably believe it to be a dangerous weapon when entering or at any time while in the building.

"A dangerous weapon" means any firearm, whether loaded or unloaded, or any device designed as a weapon and capable of producing death or great bodily harm, any combustible or flammable liquid or other device or instrumentality that, in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm, or any fire that is used to produce death or great bodily harm.[6]

"Great bodily harm" means bodily harm that creates a high probability of death, causes serious permanent disfigurement, or causes a permanent or protracted loss or impairment of the function of any part of the body, or other serious bodily harm.[7]

Third, (the alleged victim) (________) was physically present at any time while the defendant was in the building.[8]

[1] (Third) (Fourth), the defendant entered or remained in the building with the intent to commit [Insert name of intended crime alleged].

The elements of ______ are:

[INSERT elements of the intended crime without date or venue.]

It is not necessary that the intended crime was actually completed or attempted, but it is necessary that the defendant had the intent to commit that crime at the time the defendant entered or remained in the building. Whether the defendant intended to commit the crime must be determined from all the circumstances, including the manner and time of entry or remaining in the building, the nature of the building and its contents, any things the defendant may have had with the defendant, and all the other evidence in the case.

[2] (Third) (Fourth), the defendant committed the crime of ______ [Insert name of crime alleged] while in the building.

The elements of ______ are:

[INSERT elements of the alleged crime without date or venue.]

(Fourth) (Fifth), the defendant's act took place on (or about) ______, in ______ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 609.582, subd. 1(b).

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[1] Minn. Stat. § 609.581, subd. 2. *See also State v. Lopez*, 908 N.W.2d 334 (Minn. 2018) (holding a hotel guest committed a burglary when he entered another guest's room without consent and committed a theft in that room).

[2] Lawful possession defined, see CRIMJIGs 17.15, 17.16. Note that an

owner can divest himself or herself of the right to lawful possession of the building through an agreement with a co-owner. *State v. Spence*, 768 N.W.2d 104 (Minn. 2009).

[3] The statute does not impose an additional *mens rea* requirement with respect to the element of possession of a dangerous weapon, *i.e.*, the state need not prove the defendant *knowingly* possessed a dangerous weapon. *See State v. Garcia-Gutierrez*, 844 N.W.2d 519, 522 (Minn. 2014).

[4] Minn. Stat. § 609.02, subd. 6.

[5] Minn. Stat. § 609.02, subd. 8.

[6] Minn. Stat. § 609.02, subd. 6.

[7] Minn. Stat. § 609.02, subd. 8.

[8] This element is required when the state alleges the defendant possessed an "article used or fashioned in a manner to lead the victim to reasonably believe it to be a dangerous weapon." *See State v. Rogers*, 925 N.W.2d 1, 4 (Minn. 2019).

CRIMJIG 17.04

BURGLARY IN THE FIRST DEGREE—ASSAULT—ELEMENTS

n. 1.

Replace Footnote one with the following text:

A "building" is a structure suitable for affording shelter for human beings, including any adjacent, appurtenant, or connected structure. Minn. Stat. § 609.581, subds. 2 and 3. *See also State v. Lopez*, 908 N.W.2d 334 (Minn. 2018) (holding a hotel guest commits a burglary when he or she enters another guest's room without consent and commits a theft in that room).

CRIMJIG 17.06

BURGLARY IN THE SECOND DEGREE— DWELLING—ELEMENTS

n. 1.

Replace Footnote one with the following text:

A "building" is a structure suitable for affording shelter for human beings, including any adjacent, appurtenant, or connected structure. Minn. Stat. § 609.581, subds. 2 and 3. *See also State v. Lopez*, 908 N.W.2d 334 (Minn. 2018) (holding a hotel guest commits a burglary when he or she enters another guest's room without consent and commits a theft in that room).

COMMENT

Add the following text as the second paragraph of the Comment:

In *State v. Rodriguez*, 863 N.W.2d 424 (Minn. App. 2015) the Court of Appeals held that when the predicate offense for second-degree burglary is criminal damage to property, the entry of any part of the offender's body into the premises satisfies the statutory requirement that the offender committed a crime while in the building. *See also Munger v. State*, 749 N.W.2d 335 (Minn. 2008).

CRIMJIG 17.07

BURGLARY IN THE SECOND DEGREE—BANK—ELEMENTS

n. 1.

Replace Footnote one with the following text:

A "building" is a structure suitable for affording shelter for human beings, including any adjacent, appurtenant, or connected structure. Minn. Stat. § 609.581, subds. 2 and 3. *See also State v. Lopez*, 908 N.W.2d 334 (Minn. 2018) (holding a hotel guest commits a burglary when he or she enters another guest's room without consent and commits a theft in that room).

CRIMJIG 17.08

BURGLARY IN THE SECOND DEGREE—CONTROLLED SUBSTANCES STORED—ELEMENTS

n. 1.

Replace Footnote one with the following text:

A “building” is a structure suitable for affording shelter for human beings, including any adjacent, appurtenant, or connected structure. Minn. Stat. § 609.581, subds. 2 and 3. *See also State v. Lopez*, 908 N.W.2d 334 (Minn. 2018) (holding a hotel guest commits a burglary when he or she enters another guest’s room without consent and commits a theft in that room).

CRIMJIG 17.09

BURGLARY IN THE SECOND DEGREE—TOOL—ELEMENTS

n. 1.

Replace Footnote one with the following text:

A "building" is a structure suitable for affording shelter for human beings, including any adjacent, appurtenant, or connected structure. Minn. Stat. § 609.581, subds. 2 and 3. *See also State v. Lopez*, 908 N.W.2d 334 (Minn. 2018) (holding a hotel guest commits a burglary when he or she enters another guest's room without consent and commits a theft in that room).

CRIMJIG 17.11

BURGLARY IN THE THIRD DEGREE—ELEMENTS

n. 1.

Replace Footnote one with the following text:

A "building" is a structure suitable for affording shelter for human beings, including any adjacent, appurtenant, or connected structure. Minn. Stat. § 609.581, subds. 2 and 3. *See also State v. Lopez*, 908 N.W.2d 334 (Minn. 2018) (holding a hotel guest commits a burglary when he or she enters another guest's room without consent and commits a theft in that room).

CRIMJIG 17.13

BURGLARY IN THE FOURTH DEGREE—ELEMENTS

n. 1.

Replace Footnote one with the following text:

A "building" is a structure suitable for affording shelter for human beings, including any adjacent, appurtenant, or connected structure. Minn. Stat. § 609.581, subds. 2 and 3. *See also State v. Lopez*, 908 N.W.2d 334 (Minn. 2018) (holding a hotel guest commits a burglary when he or she enters another guest's room without consent and commits a theft in that room).

CRIMJIG 17.31

SURREPTITIOUS INTRUSION—HOUSE OR DWELLING PLACE—DEFINED *[Retitled]*

Replace the current Jury Instruction and Comments with the following text and Comments:

Under Minnesota law, whoever, with intent to intrude upon or interfere with the privacy of a member of the household, enters upon another's property and

[1] surreptitiously gazes, stares, or peeps in the window or any other aperture of the house or dwelling place of another

[2] surreptitiously installs or uses any device for observing, photographing, recording, amplifying, or broadcasting sounds or events through the window or any other aperture of the house or dwelling place of another

is guilty of a crime.

COMMENT

Minn. Stat. § 609.746, subd. 1(a), (b), (e).

CRIMJIG 17.32

SURREPTITIOUS INTRUSION—HOUSE OR DWELLING PLACE—ELEMENTS *[Retitled]*

Replace the current Jury Instruction and Comments with the following text and Comments:

The elements of this crime are:

First, the defendant entered upon the property of (________) (another person).

[1] Second, the defendant surreptitiously gazed, stared, or peeped in the window or any other aperture[1] of the house or dwelling place of (____) (another person).

[2] Second, the defendant surreptitiously installed or used any device for observing, photographing, recording, amplifying, or broadcasting sounds or events through the window or any other aperture[2] of the house or dwelling place of (____) (another person).

Third, the defendant (gazed, stared, or peeped) (installed the device) with intent to intrude upon or interfere with the privacy of a member of the household[3] of (____) (another person).

> **"With intent to" means that the actor either had a purpose to do the thing or cause the result specified, or believed that the act, if successful, would cause that result.[4]**

[Fourth, the defendant's act was against a person under the age of 18.]

[Fifth, the defendant knew or had reason to know a person under the age of 18 was present.

> **"To know" requires only that the defendant believed that a person under the age of 18 was present.[5]]**

(Fourth)(Sixth), the defendant's act took place on (or about) ____, in ____ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

[If you find the defendant guilty, you have an additional issue to determine, and it will be put to you in the form of a question on the verdict form. The question is: Has the defendant previously been convicted of the crime of ____?[6] If you find the fact has been proven beyond a reasonable doubt, you should answer "yes." If you find the fact has not been proven beyond a reasonable doubt, you should answer "no."][7]

COMMENT

Minn. Stat. § 609.746, subd. 1(a), (b), (e).

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[1] "Aperture" has been defined as a space through which an offender obtains a view into a place where a reasonable person has an expectation of privacy. *See State v. Ulmer*, 719 N.W.2d 213 (Minn. Ct. App. 2006).

[2] "Aperture" has been defined as a space through which an offender obtains a view into a place where a reasonable person has an expectation of privacy. *See State v. Ulmer*, 719 N.W.2d 213 (Minn. Ct. App. 2006).

[3] The statute does not define "member of the household." In the absence of statutory inclusion by reference or governing case law, the committee does not recommend using the definition of a similar statutory phrase found in chapter 518B. The chapter 518B definition is likely overbroad because it includes persons who do not currently live in the household. *See* Minn. Stat. § 518B.01, subd. 2(b).

[4] Minn. Stat. § 609.02, subd. 9(4).

[5] *See* Minn. Stat. § 609.02, subd. 9(2).

[6] A violation of Minn. Stat. § 609.746 or 609.749.

[7] The special interrogatory should be used only if the defendant is charged with an offense enhanced by prior conviction. The defendant is entitled to stipulate to the existence of a prior conviction. *State v. Davidson*, 351 N.W.2d 8 (Minn. 1984). Such a stipulation constitutes a waiver of jury trial on this element, and the defendant's waiver must be made personally and on the record. If the defendant has stipulated to the prior conviction, that information should not be presented to the jury, and the special interrogatory should not be used.

CRIMJIG 17.33

SURREPTITIOUS INTRUSION—EXPECTATION OF PRIVACY—DEFINED

Replace the current Jury Instruction and Comments with the following text and Comments:

Under Minnesota law, whoever, with intent to intrude upon or interfere with the privacy of the occupant,

[1] surreptitiously gazes, stares, or peeps in the window or any other aperture of (a sleeping room in a hotel) (a tanning booth) (a place where a reasonable person would have an expectation of privacy and has exposed or is likely to expose his or her intimate parts or the clothing covering the immediate area of the intimate parts)

[2] surreptitiously installs or uses any device for observing, photographing, recording, amplifying, or broadcasting sounds or events through the window or any other aperture of (a sleeping room in a hotel) (a tanning booth) (a place where a reasonable person would have an expectation of privacy and has exposed or is likely to expose his or her intimate parts or the clothing covering the immediate area of the intimate parts)

is guilty of a crime.

COMMENT

Minn. Stat. § 609.746, subd. 1(c), (d), (e).

CRIMJIG 17.34

SURREPTITIOUS INTRUSION—EXPECTATION OF PRIVACY—ELEMENTS

Replace the current Jury Instruction and Comments with the following text and Comments:

The elements of this crime are:

[1] First, the defendant surreptitiously gazed, stared, or peeped in the window or any other aperture[1] of (a sleeping room in a hotel) (a tanning booth) (a place where a reasonable person would have an expectation of privacy and has exposed or is likely to expose his or her intimate parts or the clothing covering the immediate area of the intimate parts).

> **["Hotel" means a hotel, motel, resort, boarding house, bed and breakfast, furnished apartment house or other building, which is kept, used, or advertised as, or held out to the public to be, a place where sleeping or housekeeping accommodations are supplied for pay to guests for transient occupancy.][2]**

> **["Intimate parts" includes the primary genital area, groin, inner thigh, buttocks, or breast.][3]**

[2] First, the defendant surreptitiously installed or used any device for observing, photographing, recording, amplifying, or broadcasting sounds or events through the window or any other aperture[4] of (a sleeping room in a hotel) (a tanning booth) (a place where a reasonable person would have an expectation of privacy and has exposed or is likely to expose his or her intimate parts or the clothing covering the immediate area of the intimate parts).

> **["Hotel" means a hotel, motel, resort, boarding house, bed and breakfast, furnished apartment house or other building, which is kept, used, or advertised as, or held out to the public to be, a place where sleeping or**

housekeeping accommodations are supplied for pay to guests for transient occupancy.][5]

[Intimate parts includes the primary genital area, groin, inner thigh, buttocks, or breast.].[6]

Second, the defendant acted with intent to intrude upon or interfere with the privacy of (——) (the occupant).

"With intent to" means that the actor either had a purpose to do the thing or cause the result specified, or believed that the act, if successful, would cause that result.[7]

[Third, the defendant's act was against a person under the age of 18.]

[Fourth, the defendant knew or had reason to know a person under the age of 18 was present.

"To know" requires only that the defendant believed that a person under the age of 18 was present.[8]]

(Third)(Fifth), the defendant's act took place on (or about) ——, in —— County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

[If you find the defendant guilty, you have an additional issue to determine, and it will be put to you in the form of a question on the verdict form. The question is: Has the defendant previously been convicted of the crime of ——?[9] If you find the fact has been proven beyond a reasonable doubt, you should answer "yes." If you find the fact has not been proven beyond a reasonable doubt, you should answer "no."][10]

COMMENT

Minn. Stat. § 609.746. subd. 1(c), (d), (e).

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[1] "Aperture" has been defined as a space through which an offender obtains a view into a place where a reasonable person has an expectation of privacy. *See State v. Ulmer*, 719 N.W.2d 213 (Minn. Ct. App. 2006) (gazing over partition in public restroom).

[2] Minn. Stat. § 327.70, subd. 3.

[3] Minn. Stat. § 609.341, subd. 5.

[4] "Aperture" is a space through which an offender obtains a view into a place where a reasonable person has an expectation of privacy. *State v. Ulmer*, 719 N.W.2d 213 (Minn. Ct. App. 2006) (gazing over partition in public restroom).

[5] Minn. Stat. § 327.70, subd. 3.

[6] Minn. Stat. § 609.341, subd. 5.

[7] Minn. Stat. § 609.02, subd. 9(4).

[8] *See* Minn. Stat. § 609.02, subd. 9(2).

[9] A violation of Minn. Stat. § 609.746 or 609.749.

[10] The special interrogatory should be used only if the defendant is charged with an offense enhanced by prior conviction. The defendant is entitled to stipulate to the existence of a prior conviction. *State v. Davidson*, 351 N.W.2d 8 (Minn. 1984). Such a stipulation constitutes a waiver of jury trial on this element, and the defendant's waiver must be made personally and on the record. If the defendant has stipulated to the prior conviction, that information should not be presented to the jury, and the special interrogatory should not be used.

CRIMJIG 17.42

SURREPTITIOUS INTRUSION—WITH SEXUAL INTENT REGARDING A MINOR—DEFINED *[New]*

Under Minnesota law,

[1] a person more than 36 months older than the minor, who, with sexual intent to intrude upon or interfere with the privacy of a minor member of the household, and who knows or has reason to know the minor is present, enters upon another's property and surreptitiously installs or uses any device for observing, photographing, recording, amplifying, or broadcasting sounds or events through the window or any other aperture of the house or dwelling place of another

[2] a person more than 36 months older than the minor, who, with sexual intent to intrude upon or interfere with the privacy of a minor, and who knows or has reason to know the minor is present, surreptitiously installs or uses any device for observing, photographing, recording, amplifying, or broadcasting sounds or events through the window or any other aperture of a place where a reasonable person would have an expectation of privacy and has exposed or is likely to expose his or her intimate parts or the clothing covering the immediate area of the intimate parts

is guilty of a crime.

COMMENT

Minn. Stat. § 609.746, subd. 1(f).

CRIMJIG 17.43

SURREPTITIOUS INTRUSION BY DEVICE—WITH SEXUAL INTENT REGARDING A MINOR—ELEMENTS *[New]*

The elements of this crime are:

[1] First, the defendant entered upon the property of (——) (another person).

Second, the defendant surreptitiously installed or used any device for observing, photographing, recording, amplifying, or broadcasting sounds or events through the window or any other aperture[1] of the house or dwelling place of (——) (another person).

[2] First, the defendant surreptitiously installed or used any device for observing, photographing, recording, amplifying, or broadcasting sounds or events through the window or any other aperture[2] of (a sleeping room in a hotel) (a tanning booth) (a place where a reasonable person would have an expectation of privacy and has exposed or is likely to expose his or her intimate parts or the clothing covering the immediate area of the intimate parts).

> ["Hotel" means a hotel, motel, resort, boarding house, bed and breakfast, furnished apartment house or other building, which is kept, used, or advertised as, or held out to the public to be, a place where sleeping or housekeeping accommodations are supplied for pay to guests for transient occupancy.][3]

> ["Intimate parts" includes the primary genital area, groin, inner thigh, buttocks, or breast.][4]

(Second) (Third), the defendant installed or used the device with intent to intrude upon or interfere with the privacy of (a member of the household[5] of (——) (another person)) ((——) (the occupant)).

> **"With intent to" means that the actor either had a purpose to do the thing or cause the result specified, or believed that the act, if successful, would cause that result.**[6]

(Third) (Fourth), the defendant's act was against a person under the age of 18.

(Fourth) (Fifth), the defendant knew or had reason to know a person under the age of 18 was present.

> **"To know" requires only that the defendant believed that a person under the age of 18 was present.**

(Fifth) (Sixth), the defendant is more than 36 months older than the person under the age of 18.

(Sixth) (Seventh), the defendant acted with sexual intent.

(Seventh) (Eighth), the defendant's act took place on (or about) ____, in ____ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 609.746, subd. 1(f).

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[1] "Aperture" has been defined as a space through which an offender obtains a view into a place where a reasonable person has an expectation of privacy. *See State v. Ulmer*, 719 N.W.2d 213 (Minn. Ct. App. 2006).

[2] "Aperture" has been defined as a space through which an offender obtains a view into a place where a reasonable person has an expectation of privacy. *See State v. Ulmer*, 719 N.W.2d 213 (Minn. Ct. App. 2006).

[3] Minn. Stat. § 327.70, subd. 3.

[4] Minn. Stat. § 609.341, subd. 5.

[5] The statute does not define "member of the household." In the absence of statutory inclusion by reference or governing case law, the committee does not recommend using the definition of a similar statutory phrase found in chapter 518B. The chapter 518B definition is likely overbroad because it includes persons who do not currently live in the household. See

Minn. Stat. § 518B.01, subd. 2(b).

[6] Minn. Stat. § 609.02, subd. 9(4).

CHAPTER 18

ARSON, AND OTHER CRIMES OF DESTRUCTION OF PROPERTY

CRIMJIG 18.02

ARSON IN THE FIRST DEGREE—DWELLING—ELEMENTS

Caution: This model jury instruction is under review by the CRIMJIGS committee in light of the decision in *State v. Beganovic*, 974 N.W.2d 278 (Minn. Ct. App. 2022), review granted in part (Minn. June 29, 2022).

Please delete the parenthetical "(or another for whose act the defendant is liable)" from the elements in this section.

CRIMJIG 18.04

ARSON IN THE FIRST DEGREE—BUILDINGS OTHER THAN DWELLINGS—ELEMENTS

Caution: This model jury instruction is under review by the CRIMJIGS committee in light of the decision in *State v. Beganovic*, 974 N.W.2d 278 (Minn. Ct. App. 2022), review granted in part (Minn. June 29, 2022).

Please delete the parenthetical "(or another for whose act the defendant is liable)" from the elements in this section.

CRIMJIG 18.06

ARSON IN THE FIRST DEGREE—FLAMMABLE OR COMBUSTIBLE LIQUIDS—ELEMENTS

Caution: This model jury instruction is under review by the CRIMJIGS committee in light of the decision in *State v. Beganovic*, 974 N.W.2d 278 (Minn. Ct. App. 2022), review granted in part (Minn. June 29, 2022).

Please delete the parenthetical "(or another for whose act the defendant is liable)" from the elements in this section.

CRIMJIG 18.08

ARSON IN THE SECOND DEGREE—ELEMENTS

Caution: This model jury instruction is under review by the CRIMJIGS committee in light of the decision in *State v. Beganovic*, 974 N.W.2d 278 (Minn. Ct. App. 2022), review granted in part (Minn. June 29, 2022).

Please delete the parenthetical "(or another for whose act the defendant is liable)" from the elements in this section.

CRIMJIG 18.10

ARSON IN THE THIRD DEGREE—ELEMENTS

Caution: This model jury instruction is under review by the CRIMJIGS committee in light of the decision in *State v. Beganovic*, 974 N.W.2d 278 (Minn. Ct. App. 2022), review granted in part (Minn. June 29, 2022).

Replace Current Instruction and Comment with the following text:

The elements of this crime are:

First, the defendant unlawfully[1] and intentionally destroyed or damaged any real or personal property by (fire) (or) (explosive). It is not necessary that the property was destroyed or seriously damaged. It is enough if there was damage to the property or any part of it.

> **"Intentionally" means that the defendant either has a purpose to do the thing or cause the result specified, or believes that the act performed by the defendant, if successful, will cause the result. In addition, the defendant must have knowledge of those facts that are necessary to make the defendant's conduct criminal and that are set forth after the word "intentionally."[2]**
>
> **["Explosive" means any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion; that is, with substantially instantaneous release of gas and heat, unless the compound, mixture, or device is otherwise specifically classified by the United States Department of Transportation. The term does not mean or include black powder, smokeless powder, primers, and fuses when used for antique or replica muzzle-loading rifles, pistols, muskets, shotguns, and cannons or when possessed or used for rifle, pistol, and shotgun ammunition, nor does it include fireworks].[3]**

[1] Second, the property destroyed or damaged by the defendant's act had a value of $300 or more.

Third, such destruction or damage was a reasonably foreseeable consequence of defendant's act.

[2] Second, the property intended by the defendant to be destroyed or damaged had a value of more than $300.

(Third) (Fourth), the defendant's act took place on (or about) ________, in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 609.563.

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[1] The trial judge may be required to instruct the jury as to unlawfulness based on case-specific facts.

[2] Minn. Stat. § 609.02, subd. 9(3).

[3] *See* Minn. Stat. § 299F.72, subd. 2; *see also* Minn. Stat. § 624.20 for further definition of "fireworks" if appropriate.

CRIMJIG 18.12

ARSON IN THE FOURTH DEGREE—ELEMENTS

Caution: This model jury instruction is under review by the CRIMJIGS committee in light of the decision in *State v. Beganovic*, 974 N.W.2d 278 (Minn. Ct. App. 2022), review granted in part (Minn. June 29, 2022).

Please delete the parenthetical "(or another for whose act the defendant is liable)" from the elements in this section.

CRIMJIG 18.14

ARSON IN THE FIFTH DEGREE—ELEMENTS

Caution: This model jury instruction is under review by the CRIMJIGS committee in light of the decision in *State v. Beganovic*, 974 N.W.2d 278 (Minn. Ct. App. 2022), review granted in part (Minn. June 29, 2022).

Please delete the parenthetical "(or another for whose act the defendant is liable)" from the elements in this section.

CRIMJIG 18.27

CRIMINAL DAMAGE TO PROPERTY—FIRST DEGREE—DEFINED

Replace Current Instruction and Comment with the following text:

Under Minnesota law, whoever intentionally causes damage to physical property of another without the other's consent is guilty of a crime.

COMMENT

Minn. Stat. § 609.595, subd. 1.

CRIMJIG 18.28

CRIMINAL DAMAGE TO PROPERTY—FIRST DEGREE—ELEMENTS *[Retitled]*

Replace Current Instruction and Comment with the following text:

The elements of this crime are:

First, the defendant intentionally caused damage to ____.

> **"Intentionally" means that the defendant either has a purpose to do the thing or cause the result specified or believes that the act performed by the defendant, if successful, will cause that result. In addition, the defendant must have knowledge of those facts which are necessary to make the defendant's conduct criminal and which are set forth after the word "intentionally."[1]**
>
> **["Damage" includes tampering with a public safety motor vehicle and acts that obstruct or interfere with the vehicle's use.]**

Second, the ____ was the property of (____) (another person).

Third, (____) (the other person) did not consent to the damaging of the property.

[1] Fourth, the damage to ____ created a reasonably foreseeable risk of bodily harm.

> **"Bodily harm" means physical pain or injury, illness, or any impairment of physical condition.[2] It is not necessary that bodily harm resulted, only that a reasonably foreseeable risk of such harm was created.**

[2] Fourth, the vehicle was a public safety motor vehicle.

> **"Public safety motor vehicle" includes ____.[3]**

Fifth, the defendant knew the vehicle was a public safety motor vehicle.

> "To know" requires only that the defendant believes that the specified fact exists.[4]

Sixth, the damage to the vehicle caused a (substantial interruption or impairment of public service) (reasonably foreseeable risk of bodily harm).

> ["Bodily harm" means physical pain or injury, illness, or any impairment of physical condition.[5] It is not necessary that bodily harm resulted, only that a reasonably foreseeable risk of such harm was created.]

[3] Fourth, ____ belonged to a (public utility) (common carrier).

Fifth, the damage impaired ____'s service to the public.

[4] Fourth, the damage reduced the value of the property by more than $1,000 as measured by the cost of repair and replacement.

[5] Fourth, the damage reduced the value of the property by more than $500 as measured by the cost of repair and replacement.

Fifth, the defendant has been convicted within the preceding three years of a violation of Minn. Stat. § 609.595, subd. 1 or 2.[6]

(Fifth) (Sixth) (Seventh), the defendant's act(s) took place on (or about) ____, [and at least one incident of damage took place][7] in ____ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 609.595, subd. 1.

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[1] Minn. Stat. § 609.02, subd. 9(3).

[2] Minn. Stat. § 609.02, subd. 7.

[3] *See* Minn. Stat. § 609.595, subd. 4, for a list of "public safety motor vehicles" to which the statute applies.

[4] Minn. Stat. § 609.02, subd. 9(2).

[5] Minn. Stat. § 609.02, subd. 7.

[6] The defendant is entitled to stipulate to the existence of a prior conviction. *State v. Davidson*, 351 N.W.2d 8, 11 (Minn. 1984). Such a stipulation constitutes a waiver of jury trial on this element, and the defendant's waiver must be made personally and on the record. If the defendant has stipulated to the prior conviction, that information should not be presented to the jury, and this element should not be included.

[7] *See* Minn. Stat. § 609.595, subd. 1 (aggregation provision).

CRIMJIG 18.29

CRIMINAL DAMAGE TO PROPERTY—SECOND DEGREE AND THIRD DEGREE—DEFINED

Replace Current Instruction and Comment with the following text:

Under Minnesota law, whoever intentionally causes damage to physical property of another without the other's consent [and does so because of the property owner's actual or perceived (race) (color) (religion) (sex) (sexual orientation) (disability) (age) (national origin)] is guilty of a crime.

COMMENT

Minn. Stat. § 609.595, subds. 1a, 2.

CRIMJIG 18.30

CRIMINAL DAMAGE TO PROPERTY—SECOND DEGREE AND THIRD DEGREE—ELEMENTS

Replace Current Instruction and Comment with the following text:

The elements of this crime are:

First, the defendant intentionally caused damage to ________.

> **"Intentionally" means that the defendant either has a purpose to do the thing or cause the result specified or believes that the act performed by the defendant, if successful, will cause that result. In addition, the defendant must have knowledge of those facts which are necessary to make the defendant's conduct criminal and which are set forth after the word "intentionally."[1]**
>
> **["Damage" includes tampering with a public safety motor vehicle and acts that obstruct or interfere with the vehicle's use.]**

Second, the ____ was the property of (________) (another person).

Third, (____) (the other person) did not consent to the damaging of the property.

[1] Fourth, the defendant caused the damage because of the property owner's or another's actual or perceived (race) (color) (religion) (sex) (sexual orientation) (disability) (age) (national origin).

> **["Disability" means any condition or characteristic that renders a person a disabled person. A "disabled person" is any person who (1) has a physical, sensory, or mental impairment which materially limits one or more major life activities; (2) has a record of such an impairment; or (3) is regarded as having such an impairment.][2]**

[2] Fourth, the damage reduced the value of the property by more than $500 as measured by the cost of repair and replacement.

[Fifth, the defendant caused the damage because of the property owner's or another's actual or perceived (race) (color) (religion) (sex) (sexual orientation) (disability) (age) (national origin).]

> **["Disability" means any condition or characteristic that renders a person a disabled person. A "disabled person" is any person who (1) has a physical, sensory, or mental impairment which materially limits one or more major life activities; (2) has a record of such an impairment; or (3) is regarded as having such an impairment.]**[3]

[3] Fourth, the vehicle was a public safety motor vehicle.

> **"Public safety motor vehicle" includes ________.**[4]

Fifth, the defendant knew the vehicle was a public safety motor vehicle.

> **"To know" requires only that the defendant believes that the specified fact exists.**[5]

[Sixth, the defendant caused the damage because of the property owner's or another's actual or perceived (race) (color) (religion) (sex) (sexual orientation) (disability) (age) (national origin).]

> **["Disability" means any condition or characteristic that renders a person a disabled person. A "disabled person" is any person who (1) has a physical, sensory, or mental impairment which materially limits one or more major life activities; (2) has a record of such an impairment; or (3) is regarded as having such an impairment.]**[6]

(Fifth) (Sixth) (Seventh), the defendant's act(s) took place on (or about) ____, [and at one incident of damage took place][7] in ____ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 609.595, subds. 1a, 2.

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[1] Minn. Stat. § 609.595, subds. 1a, 2.

[2] Minn. Stat. § 363A.03, subd. 12.

[3] Minn. Stat. § 363A.03, subd. 12.

[4] *See* Minn. Stat. § 609.595, subd. 4, for a list of "public safety motor vehicles" to which the statute applies.

[5] Minn. Stat. § 609.02, subd. 9(2).

[6] Minn. Stat. § 363A.03, subd. 12.

[7] *See* Minn. Stat. § 609.595, subds. 1a(b), 2(c) (aggregation provisions).

CRIMJIG 18.45

CRIMINAL DAMAGE TO PROPERTY—FOURTH DEGREE—DEFINED *[New]*

Under Minnesota law, whoever intentionally causes damage to physical property of another without the other's consent is guilty of a crime.

COMMENT

Minn. Stat. § 609.595, subd. 3.

CRIMJIG 18.46

CRIMINAL DAMAGE TO PROPERTY—FOURTH DEGREE—ELEMENTS *[New]*

The elements of this crime are:

First, the defendant intentionally caused damage to ________.

> **"Intentionally" means that the defendant either has a purpose to do the thing or cause the result specified or believes that the act performed by the defendant, if successful, will cause that result. In addition, the defendant must have knowledge of those facts which are necessary to make the defendant's conduct criminal and which are set forth after the word "intentionally."[1]**

Second, the ____ was the property of (________) (another person).

Third, (____) (the other person) did not consent to the damaging of the property.

Fourth, the defendant's act took place on (or about) ____, in ____ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 609.595, subd. 3.

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[1] Minn. Stat. § 609.02, subd. 9(3).

C. DRUG CRIMES

CHAPTER 20

DRUG CRIMES

CRIMJIG 20.01

CONTROLLED SUBSTANCE CRIME IN THE FIRST DEGREE—SALE—DEFINED

Replace the current Jury Instruction with the following text:

Under Minnesota law, whoever, on one or more occasions within a ninety-day period, unlawfully sells

[1] one or more mixtures of a total weight of seventeen grams or more containing (cocaine) (methamphetamine),

[2] one or more mixtures of a total weight of ten grams or more containing (cocaine) (methamphetamine) and [*choose one*:]

[A] that person or an accomplice [possessed a firearm on their person or within immediate reach] [(brandished) (displayed) (threatened a person with) (otherwise employed) a firearm]

[B] the offense involves [at least two of the following aggravating factors:] [the following two aggravating factors:]

[1] the defendant, within the previous ten years, has been convicted of ________________[1] [; and]

[2] the offense was committed for the benefit of a criminal gang [; and]

[3] the offense involved separate acts of sale or possession of (cocaine)(methamphetamine) in three or more counties [; and]

[4] the offense involved the transfer of (cocaine) (methamphetamine) across the (state) (international) border and into Minnesota [; and]

[5] the offense involved at least three separate transactions in which (cocaine) (methamphetamine) (was)(were) (sold)(transferred)(possessed with intent to (sell) (transfer)) [; and]

[6] the circumstances of the offense reveal the defendant to have occupied a high position in the drug distribution hierarchy [; and]

[7] the defendant used a position or status to facilitate the commission of the offense, including a position of (trust) (confidence) (fiduciary relationship) [; and]

[8] the offense involved the sale of (cocaine) (methamphetamine) to (a person under the age of eighteen)(a vulnerable adult) [; and]

[9] the defendant or an accomplice manufactured, possessed, or sold (cocaine) (methamphetamine) in a school zone, park zone, correctional facility, or drug treatment facility [; and]

[10] the defendant or an accomplice possessed (equipment) (drug paraphernalia) (documents) (money) evidencing that the offense involved the (cultivation) (manufacture) (distribution) (possession) of (cocaine) (methamphetamine) in quantities substantially larger than ten grams.

[3] one or more mixtures of a total weight of ten grams or more containing heroin

[4] one or more mixtures of a total weight of fifty grams or more containing ________[2]

[5] one or more mixtures of a total weight of fifty grams or more containing (amphetamine) (phencyclidine) (hallucinogen)

[6] two hundred or more dosage units of a mixture containing (amphetamine) (phencyclidine) (hallucinogen)

[7] one or more mixtures of a total weight of twenty-five kilograms or more containing (marijuana) (tetrahydrocannabinols)

is guilty of a crime.

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[1] List violent crime as identified in the complaint. *See* M.S.A. § 152.01, subd. 24(1).

[2] A narcotic drug other than cocaine, heroin, or methamphetamine as charged in the complaint.

CRIMJIG 20.02

CONTROLLED SUBSTANCE CRIME IN THE FIRST DEGREE—SALE—ELEMENTS

Caution: This model jury instruction is under review by the CRIMJIGS committee in light of the decision in *State v. Loveless*, 966 N.W.2d 493 (Minn. Ct. App. 2021), review granted (Minn. Dec. 14, 2021).

Replace the current Jury Instruction with the following text and Footnotes:

The elements of a controlled substance violation in the first degree are:

First, the defendant, on one or more occasions within a ninety-day period, sold

[1] one or more mixtures of a total weight of seventeen grams or more containing (cocaine) (methamphetamine).

[2] one or more mixtures of a total weight of ten grams or more containing (cocaine) (methamphetamine) and [*choose one*:]

[A] (the defendant)(an accomplice) [possessed a firearm on their person or within immediate reach] [(brandished)(displayed)(threatened a person with)(otherwise employed) a firearm]. [*refer to and add CRIMJIG 2.09 for definition of accomplice*][A "firearm" means a device designed to be used as a weapon, from which is expelled a projectile by the force of any explosion or force of combustion.][1]

[B] the offense involved [at least two of the following aggravating factors:][the following two aggravating factors:]

[1] the defendant, within the previous ten years,

has been convicted of ________________[2][; and]

[2] the offense was committed for the benefit of a criminal gang. A "criminal gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, that has as one of its primary activities the commission of one or more of the crimes of ________________[3], has a common name or common identifying symbol, and includes members who individually or collectively engage in a pattern of criminal activity [; and]

[3] the offense involved separate acts of sale or possession of (cocaine) (methamphetamine) in three or more counties, specifically: ________, ________, and ________,counties [; and]

[4] the offense involved the transfer of (cocaine) (methamphetamine) across the (state)(international) border and into Minnesota [; and]

[5] the offense involved at least three separate transactions in which (cocaine) (methamphetamine) (was)(were) (sold)(transferred)(possessed with intent to (sell) (transfer)) [; and]

[6] the circumstances of the offense reveal the defendant to have occupied a high position in the drug distribution hierarchy [; and]

[7] the defendant used a position or status to facilitate the commission of the offense, including a position of (trust) (confidence) (fiduciary relationship) [A fiduciary relationship exists when a person, referred to as the fiduciary, holds a superior position of authority and control over the property of another person referred to as the principal, and in

whom the principal places a high level of trust and confidence.] [; and]

[8] the offense involved the sale of (cocaine) (methamphetamine) to ________________, who is [under the age of eighteen] [a vulnerable adult] [A "vulnerable adult" is a person who is 18 years of age or older who (is a resident inpatient of a facility) (receives services at or from a facility required to be licensed by the Commissioner of Human Services to serve adults, except that a person who receives outpatient services for treatment of chemical dependency or mental illness or who has been committed as a sexual psychopathic personality or sexually dangerous person is not considered a vulnerable adult unless that person possesses a physical or mental infirmity or there is physical or mental emotional dysfunction that impairs the person's ability to provide adequately for his or her own care without assistance, including the provision of food, shelter, clothing, health care, or supervision, and, because of the dysfunction or infirmity and the need for assistance, has an impaired ability to protect self from maltreatment) (receives services from a home care provider licensed by the Commissioner of Human Services or from a person or organization that exclusively offers, provides, or arranges for personal care assistance services) (regardless of residence or whether any type of service is received, possesses a physical or mental infirmity or other physical, mental, or emotional dysfunction that impairs the person's ability to provide adequately for his or her care without assistance, including the provision of food, shelter, clothing, health care, or supervision, and, because of the dysfunction or infirmity and the need for assistance, has an impaired

ability to protect self from maltreatment)] [; and]

[9] the defendant or an accomplice (manufactured)(possessed)(sold) (cocaine)(methamphetamine) in a (school zone)(park zone)(correctional facility)(drug treatment facility) [A "school zone" is any property owned, leased, or controlled by a school district or an organization operating a nonpublic school[4] where an elementary, middle, or secondary school, secondary vocational center, or other school providing educational services for grades one through twelve is located or used for educational purposes, or where extracurricular or co-curricular activities are regularly provided.] [A school zone also includes the area surrounding the school property to a distance of 300 feet or one city block, whichever is greater, beyond the school property.] [A school zone also includes the area within a school bus when the school bus is being used to transport one or more elementary or secondary school students.] [A "park zone" is an area designated as a public park by the federal government, the state, a local unit of government, a park district board, or a park and recreation board in a city of the first class. Park zone includes the area (within three hundred feet) (or) (one city block,) (whichever distance is greater,) of the park boundary.] [A "correctional facility" means any facility, including a group home, having a residential component, the primary purpose of which is to serve persons placed therein by a court, court services department, parole authority, or other correctional agency having dispositional power over persons charged with, convicted, or adjudicated to be guilty or delinquent.[5]] [A "drug treatment facility" means a residential treatment facility, and

includes any property owned, leased, or controlled by the facility.] [*refer to and add CRIMJIG 2.09 for definition of accomplice*] [; and].

[10] the defendant or an accomplice possessed (equipment) (drug paraphernalia) (documents) (money) evidencing that the offense involved the (cultivation) (manufacture) (distribution) (possession) of (cocaine) (methamphetamine) in quantities substantially larger than ten grams.[*refer to and add CRIMJIG 2.09 for definition of accomplice*].

[3] one or more mixtures of a total weight of ten grams or more containing heroin.

[4] one or more mixtures of a total weight of fifty grams or more containing ________.[5]

[5] one or more mixtures of a total weight of fifty grams or more containing (amphetamine) (phencyclidine) (hallucinogen).

[6] two hundred or more dosage units of a mixture containing (amphetamine) (phencyclidine) (hallucinogen).

[7] one or more mixtures of a total weight of twenty-five kilograms or more containing (marijuana) (tetrahydrocannabinols).

"To sell" means to sell, give away, barter, deliver, exchange, distribute, or dispose of to another, or to offer or agree to do the same, or possess with intent to do the same, or to manufacture. ["To manufacture" means and includes the production, cultivation, quality control, and standardization of drugs by mechanical, physical, chemical, or pharmaceutical means, and their packing, repacking, tableting, encapsulating, labeling, relabeling, filling, or other processing.]

A "mixture" is a preparation, compound, mixture, or substance containing a controlled substance, regardless of its purity.[7]

Second, defendant knew or believed that the substance sold was a controlled substance.[8]

Third, the defendant's sale of ______ was without lawful authority.

Fourth, one or more sales took place on (or about) ______ in ______ County.[9]

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

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[1] *See* M.S.A. § 609.666, subd. 1.

[2] List violent crime as identified in the complaint. *See* M.S.A. § 152.01, subd. 24(1).

[3] List offense from M.S.A. § 609.11, subd. 9, as identified in the complaint. *See* M.S.A. § 609.229, subd. 1(1).

[4] *See* Minn. Stat. § 123B.41, subd. 9 for the definition of a "nonpublic school."

[5] "Correctional facility" is not defined in Chapter 152, so the committee has incorporated the definition found in M.S.A. § 241.021, subd. 1(f).

[6] A narcotic drug other than cocaine, heroin, or methamphetamine as charged in the complaint.

[7] Note the exceptions listed under M.S.A. § 152.021, subd. 2(b); 152.022, subd. 2(b); and 152.023, subd. 2(b).

[8] The defendant need only know that it was a controlled substance and not what the exact scientific description of the controlled substance was. *See State v. Ali*, 775 N.W.2d 914 (Minn. App. 2009).

[9] *See* M.S.A. 152.021, subd. 3(c).

CRIMJIG 20.03

CONTROLLED SUBSTANCE CRIME IN THE FIRST DEGREE—POSSESSION—DEFINED

Replace the current Jury Instruction with the following text:

Under Minnesota law, whoever unlawfully possesses

[1] one or more mixtures of a total weight of fifty grams or more containing (cocaine) (methamphetamine),

[2] one or more mixtures of a total weight of twenty-five grams or more containing (cocaine) (methamphetamine) and [*choose one*]

[A] that person or an accomplice [possessed a firearm on their person or within immediate reach] [(brandished)(displayed)(threatened a person with)(otherwise employed) a firearm]

[B] the offense involves [at least two of the following aggravating factors:] [the following two aggravating factors:]

[1] the defendant, within the previous ten years, has been convicted of ________________,[1] [; and]

[2] the offense was committed for the benefit of a criminal gang [; and]

[3] the offense involved separate acts of sale or possession of (cocaine) (methamphetamine) in three or more counties [; and]

[4] the offense involved the transfer of (cocaine) (methamphetamine) across the (state)(international) border and into Minnesota [; and]

[5] the offense involved at least three separate transactions in which (cocaine) (methamphet-

amine) (was)(were) (sold)(transferred)(possessed with intent to (sell) (transfer)) [; and]

[6] the circumstances of the offense reveal the defendant to have occupied a high position in the drug distribution hierarchy [; and]

[7] the defendant used a position or status to facilitate the commission of the offense, including a position of (trust) (confidence) (fiduciary relationship) [; and]

[8] the offense involved the sale of (cocaine) (methamphetamine) to ______________, who [is under the age of eighteen] [is a vulnerable adult] [; and]

[9] the defendant or an accomplice manufactured, possessed, or sold (cocaine) (methamphetamine) in a school zone, park zone, correctional facility, or drug treatment facility [; and]

[10] the defendant or an accomplice possessed (equipment) (drug paraphernalia) (documents) (money) evidencing that the offense involved the (cultivation) (manufacture) (distribution) (possession) of (cocaine) (methamphetamine) in quantities substantially larger than twenty-five grams.

[3] one or more mixtures of a total weight of twenty-five grams or more containing heroin

[4] one or more mixtures of a total weight of five hundred grams or more containing ______________[2]

[5] one or more mixtures of a total weight of five hundred grams or more containing (amphetamine) (phencyclidine)(hallucinogen)

[6] five hundred or more dosage units of a mixture

containing (amphetamine) (phencyclidine) (hallucinogen)

[7] one or more mixtures of a total weight of fifty kilograms or more containing marijuana or tetrahydrocannabinols

[8] five hundred or more marijuana plants

is guilty of a crime.

---

[1] List violent crime as identified in the complaint. *See* M.S.A. § 152.01, subd. 24(1).

[2] A narcotic drug other than cocaine, heroin, or methamphetamine as charged in the complaint.

CRIMJIG 20.04

CONTROLLED SUBSTANCE CRIME IN THE FIRST DEGREE—POSSESSION—ELEMENTS

Caution: This model jury instruction is under review by the CRIMJIGS committee in light of the decision in *State v. Loveless*, 966 N.W.2d 493 (Minn. Ct. App. 2021), review granted (Minn. Dec. 14, 2021).

Replace the current Jury Instruction with the following text:

The elements of a controlled substance crime in the first degree are:

First, the defendant knowingly possessed

[1] one or more mixtures of a total weight of fifty grams or more containing (cocaine) (methamphetamine).

[2] one or more mixtures of a total weight of twenty-five grams or more containing (cocaine) (methamphetamine) and [*choose one*]

[A] (the defendant)(an accomplice) [possessed a firearm on their person or within immediate reach] [(brandished)(displayed)(threatened a person with)(otherwise employed) a firearm]. [*refer to and add CRIMJIG 2.09 for definition of accomplice*][A "firearm" means a device designed to be used as a weapon, from which is expelled a projectile by the force of any explosion or force of combustion.][1]

[B] the offense involved [at least two of the following aggravating factors:][the following two aggravating factors:]

[1] the defendant, within the previous ten years, has been convicted of ____________________[2][; and]

[2] the offense was committed for the benefit of

a criminal gang. A "criminal gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, that has as one of its primary activities the commission of one or more of the crimes of ____________,[3] has a common name or common identifying symbol, and includes members who individually or collectively engage in a pattern of criminal activity [; and]

[3] the offense involved separate acts of sale or possession of (cocaine) (methamphetamine) in three or more counties, specifically: ________, ________, and ________, counties [; and]

[4] the offense involved the transfer of (cocaine) (methamphetamine) across the (state)(international) border and into Minnesota [; and]

[5] the offense involved at least three separate transactions in which (cocaine) (methamphetamine) (was)(were) (sold)(transferred)(possessed with intent to (sell) (transfer)) [; and]

[6] the circumstances of the offense reveal the defendant to have occupied a high position in the drug distribution hierarchy [; and]

[7] the defendant used a position or status to facilitate the commission of the offense, including a position of (trust) (confidence) (fiduciary relationship) [A fiduciary relationship exists when a person, referred to as the fiduciary, holds a superior position of authority and control over the property of another person referred to as the principal, and in whom the principal places a high level of trust and confidence.] [; and]

[8] the offense involved the sale of (cocaine)

(methamphetamine) to ______________, who is [under the age of eighteen] [a vulnerable adult] [A "vulnerable adult" is a person who is 18 years of age or older who (is a resident inpatient of a facility) (receives services at or from a facility required to be licensed by the Commissioner of Human Services to serve adults, except that a person who receives outpatient services for treatment of chemical dependency or mental illness or who has been committed as a sexual psychopathic personality or sexually dangerous person is not considered a vulnerable adult unless that person possesses a physical or mental infirmity or there is physical or mental emotional dysfunction that impairs the person's ability to provide adequately for his or her own care without assistance, including the provision of food, shelter, clothing, health care, or supervision, and, because of the dysfunction or infirmity and the need for assistance, has an impaired ability to protect self from maltreatment) (receives services from a home care provider licensed by the Commissioner of Human Services or from a person or organization that exclusively offers, provides, or arranges for personal care assistance services) (regardless of residence or whether any type of service is received, possesses a physical or mental infirmity or other physical, mental, or emotional dysfunction that impairs the person's ability to provide adequately for his or her care without assistance, including the provision of food, shelter, clothing, health care, or supervision, and, because of the dysfunction or infirmity and the need for assistance, has an impaired ability to protect self from maltreatment)] [; and]

[9] the defendant or an accomplice (manufac-

tured)(possessed)(sold) (cocaine) (methamphetamine) in a (school zone)(park zone)(correctional facility)(drug treatment facility) [A "school zone" is any property owned, leased, or controlled by a school district or an organization operating a nonpublic school where an elementary, middle, or secondary school, secondary vocational center, or other school providing educational services for grades one through twelve is located or used for educational purposes, or where extracurricular or co-curricular activities are regularly provided.] [A school zone also includes the area surrounding the school property to a distance of 300 feet or one city block, whichever is greater, beyond the school property.] [A school zone also includes the area within a school bus when the school bus is being used to transport one or more elementary or secondary school students.] [A "park zone" is an area designated as a public park by the federal government, the state, a local unit of government, a park district board, or a park and recreation board in a city of the first class. Park zone includes the area (within three hundred feet) (or) (one city block,) (whichever distance is greater,) of the park boundary.] [A "correctional facility" means any facility, including a group home, having a residential component, the primary purpose of which is to serve persons placed therein by a court, court services department, parole authority, or other correctional agency having dispositional power over persons charged with, convicted, or adjudicated to be guilty or delinquent.[4]] [A "drug treatment facility" means a residential treatment facility, and includes any property owned, leased, or controlled by the facility.] [*refer to and add CRIMJIG 2.09 for definition of accomplice*] [; and]

[10] the defendant or an accomplice possessed (equipment) (drug paraphernalia) (documents) (money) evidencing that the offense involved the (cultivation) (manufacture) (distribution) (possession) of (cocaine) (methamphetamine) in quantities substantially larger than twenty-five grams. [*refer to and add CRIMJIG 2.09 for definition of accomplice*]

[3] one or more mixtures of a total weight of twenty-five grams or more containing heroin.

[4] one or more mixtures of a total weight of five hundred grams or more containing ________.[5]

[5] one or more mixtures of a total weight of five hundred grams or more containing (amphetamine)(phencyclidine)(hallucinogen).

[6] five hundred or more dosage units of a mixture containing (amphetamine) (phencyclidine) (hallucinogen).

[7] one or more mixtures of a total weight of fifty kilograms or more containing marijuana or tetrahydrocannabinols.

[8] five-hundred or more marijuana plants.

"To know" requires only that the defendant believes that the specified fact exists.

A "mixture" is a preparation, compound, mixture, or substance containing a controlled substance, regardless of its purity. [The weight of a mixture includes the fluid in a water pipe ("bong") only if the mixture contains four or more fluid ounces of fluid.[6]]

[The law recognizes two kinds of possession: "actual possession" and "constructive possession." A person is in actual possession of ________ (the controlled substance)

if (he) (she) has it on (his) (her) person or is exercising direct physical control over ______ (the controlled substance) at a given time. A person is in constructive possession of ______ (the controlled substance) if ______ (the controlled substance) was in a place under (his) (her) exclusive control to which other people did not normally have access, or if found in a place to which others had access, the person knowingly exercised dominion and control over ______ (the controlled substance). You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that the defendant had actual or constructive possession.]

[The law also recognizes that possession may be either exclusive or joint. If one person alone has actual or constructive possession of ______ (a controlled substance), possession is exclusive. If two or more persons share actual or constructive possession of ______ (controlled substance), possession is joint. You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that defendant had actual or constructive possession of ______ (the controlled substance), whether exclusively or jointly with others.]

Second, the defendant knew or believed that the substance possessed was a controlled substance.[7]

Third, the defendant's possession of ______ was without lawful authority.

Fourth, the defendant's act took place on (or about) ______ in ______ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

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[1] *See* M.S.A. § 609.666, subd. 1.

[2] List violent crime as identified in the complaint. *See* M.S.A. § 152.01, subd. 24(1).

[3] List offense from M.S.A. § 609.11, subd. 9, as identified in the complaint. *See* M.S.A. § 609.229, subd. 1(1).

[4] "Correctional facility" is not defined in Chapter 152, so the committee has incorporated the definition found in M.S.A § 241.021, subd. 1(f).

[5] Insert narcotic drug other than cocaine, heroin or methamphetamine. *See* M.S.A. § 152.021, subd. 2(4).

[6] *See State v. Peck*, 773 N.W.2d 768 (Minn. 2009) and M.S.A. § 152.021, subd. 2(b), modifying *Peck*.

[7] The defendant need only know that it was a controlled substance and not what the exact scientific description of the controlled substance was. *See State v. Ali*, 775 N.W.2d 914 (Minn. App. 2009).

CRIMJIG 20.07

CONTROLLED SUBSTANCE CRIME IN THE SECOND DEGREE—SALE—DEFINED

Replace the current Jury Instruction with the following text:

Under Minnesota law, whoever, on one or more occasions within a ninety day period, unlawfully sells

[1] one or more mixtures of a total weight of ten grams or more containing ________[1]

[2] one or more mixtures of a total weight of three grams or more containing (cocaine) (methamphetamine) and [*choose one*]

[A] that person or an accomplice [possessed a firearm on their person or within immediate reach] [(brandished)(displayed)(threatened a person with)(otherwise employed) a firearm]

[B] the offense involved [at least three of the following aggravating factors:][the following three aggravating factors:]

[1] the defendant, within the previous ten years, has been convicted of ________[2][; and]

[2] the offense was committed for the benefit of a criminal gang [; and]

[3] the offense involved separate acts of sale or possession of (cocaine) (methamphetamine) in three or more counties [; and]

[4] the offense involved the transfer of (cocaine) (methamphetamine) across the (state)(international) border and into Minnesota [; and]

[5] the offense involved at least three separate transactions in which (cocaine) (methamphet-

amine) (was)(were) (sold)(transferred)(possessed with intent to (sell) (transfer)) [; and]

[6] the circumstances of the offense reveal the defendant to have occupied a high position in the drug distribution hierarchy [; and]

[7] the defendant used a position or status to facilitate the commission of the offense, including a position of (trust) (confidence) (fiduciary relationship) [; and]

[8] the offense involved the sale of (cocaine) (methamphetamine) to (a person under the age of eighteen)(a vulnerable adult) [; and]

[9] the defendant or an accomplice manufactured, possessed, or sold (cocaine) (methamphetamine) in a school zone, park zone, correctional facility, or drug treatment facility [; and]

[10] the defendant or an accomplice possessed (equipment) (drug paraphernalia) (documents) (money) evidencing that the offense involved the (cultivation) (manufacture) (distribution) (possession) of (cocaine) (methamphetamine) in quantities substantially larger than three grams.

[3] one or more mixtures of a total weight of three grams or more containing heroin

[4] one or more mixtures of a total weight of ten grams or more containing (amphetamine) (phencyclidine) (hallucinogen)

[5] fifty or more dosage units of a mixture containing (amphetamine)(phencyclidine)(hallucinogen)

[6] one or more mixtures of a total weight of ten kilograms or more containing (marijuana) (tetrahydrocannabinols)

is guilty of a crime.

---

[1] List narcotic drug other than heroin. *See* M.S.A. § 152.022, subd. 1(1).

[2] List violent crime as identified in the complaint. *See* M.S.A. § 152.01, subd. 24(1).

CRIMJIG 20.08

CONTROLLED SUBSTANCE CRIME IN THE SECOND DEGREE—SALE—ELEMENTS

Caution: This model jury instruction is under review by the CRIMJIGS committee in light of the decision in *State v. Loveless*, 966 N.W.2d 493 (Minn. Ct. App. 2021), review granted (Minn. Dec. 14, 2021).

Replace the current Jury Instruction with the following text:

The elements of a controlled substance crime in the second degree are:

First, the defendant on one or more occasions within a ninety-day period sold

[1] one or more mixtures of a total weight of ten grams or more containing ________.[1]

[2] one or more mixtures of a total weight of three grams or more containing (cocaine) (methamphetamine) and [*choose one*]

  [A] (the defendant)(an accomplice) [possessed a firearm on their person or within immediate reach] [(brandished)(displayed)(threatened a person with)(otherwise employed) a firearm]. [*refer to and add CRIMJIG 2.09 for definition of accomplice*]. [A "firearm" means a device designed to be used as a weapon, from which is expelled a projectile by the force of any explosion or force of combustion.][2]

  [B] The offense involved [at least three of the following aggravating factors:][the following three aggravating factors:]

    [1] the defendant, within the previous ten years, has been convicted of ________[3]**[; and]**

    [2] the offense was committed for the benefit of

a criminal gang. A "criminal gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, that has as one of its primary activities the commission of one or more of the crimes of ________________,[4] has a common name or common identifying symbol, and includes members who individually or collectively engage in a pattern of criminal activity [; and]

[3] the offense involved separate acts of sale or possession of (cocaine) (methamphetamine) in three or more counties, specifically: ________, ________, and ________, counties [; and]

[4] the offense involved the transfer of (cocaine) (methamphetamine) across the (state)(international) border and into Minnesota [; and]

[5] the offense involved at least three separate transactions in which (cocaine) (methamphetamine) (was)(were) (sold)(transferred)(possessed with intent to (sell) (transfer)) [; and]

[6] the circumstances of the offense reveal the defendant to have occupied a high position in the drug distribution hierarchy [; and]

[7] the defendant used a position or status to facilitate the commission of the offense, including a position of (trust) (confidence) (fiduciary relationship) [A fiduciary relationship exists when a person, referred to as the fiduciary, holds a superior position of authority and control over the property of another person referred to as the principal, and in whom the principal places a high level of trust and confidence.] [; and]

[8] the offense involved the sale of (cocaine)

(methamphetamine) to ____________________, who is [under the age of eighteen] [a vulnerable adult] [A "vulnerable adult" is a person who is 18 years of age or older who (is a resident inpatient of a facility) (receives services at or from a facility required to be licensed by the Commissioner of Human Services to serve adults, except that a person who receives outpatient services for treatment of chemical dependency or mental illness or who has been committed as a sexual psychopathic personality or sexually dangerous person is not considered a vulnerable adult unless that person possesses a physical or mental infirmity or there is physical or mental emotional dysfunction that impairs the person's ability to provide adequately for his or her own care without assistance, including the provision of food, shelter, clothing, health care, or supervision, and, because of the dysfunction or infirmity and the need for assistance, has an impaired ability to protect self from maltreatment) (receives services from a home care provider licensed by the Commissioner of Human Services or from a person or organization that exclusively offers, provides, or arranges for personal care assistance services) (regardless of residence or whether any type of service is received, possesses a physical or mental infirmity or other physical, mental, or emotional dysfunction that impairs the person's ability to provide adequately for his or her care without assistance, including the provision of food, shelter, clothing, health care, or supervision, and, because of the dysfunction or infirmity and the need for assistance, has an impaired ability to protect self from maltreatment)] [; and]

[9] **the defendant or an accomplice (manufac-**

tured)(possessed)(sold) (cocaine) (methamphetamine) in a (school zone)(park zone)(correctional facility)(drug treatment facility) [A "school zone" is any property owned, leased, or controlled by a school district or an organization operating a nonpublic school[5] where an elementary, middle, or secondary school, secondary vocational center, or other school providing educational services for grades one through twelve is located or used for educational purposes, or where extracurricular or co-curricular activities are regularly provided.] [A school zone also includes the area surrounding the school property to a distance of 300 feet or one city block, whichever is greater, beyond the school property.] [A school zone also includes the area within a school bus when the school bus is being used to transport one or more elementary or secondary school students.] [A "park zone" is an area designated as a public park by the federal government, the state, a local unit of government, a park district board, or a park and recreation board in a city of the first class. Park zone includes the area (within three hundred feet) (or) (one city block,) (whichever distance is greater,) of the park boundary.] [A "correctional facility" means any facility, including a group home, having a residential component, the primary purpose of which is to serve persons placed therein by a court, court services department, parole authority, or other correctional agency having dispositional power over persons charged with, convicted, or adjudicated to be guilty or delinquent.[6]] [A "drug treatment facility" means a residential treatment facility, and includes any property owned, leased, or controlled by the facility.] [*refer to and add CRIMJIG 2.09 for definition of accomplice*] [; and]

[10] the defendant or an accomplice possessed (equipment) (drug paraphernalia) (documents) (money) evidencing that the offense involved the (cultivation) (manufacture) (distribution) (possession) of (cocaine) (methamphetamine) in quantities substantially larger than three grams. [*refer to and add CRIMJIG 2.09 for definition of accomplice*]

[3] one or more mixtures of a total weight of three grams or more containing heroin.

[4] one or more mixtures of a total weight of ten grams or more containing (amphetamine)(phencyclidine)(hallucinogen).

[5] fifty or more dosage units of a mixture containing (amphetamine)(phencyclidine)(hallucinogen).

[6] one or more mixtures of a total weight of ten kilograms or more containing (marijuana) (tetrahydrocannabinols).

"To sell" means to sell, give away, barter, deliver, exchange, distribute, or dispose of to another, to offer or agree to do the same, to possess with intent to do the same, or to manufacture. ["To manufacture" means and includes the production, cultivation, quality control, and standardization of drugs by mechanical, physical, chemical, or pharmaceutical means, their packing, repacking, tableting, encapsulating, labeling, relabeling, filling, or other processing.] A "mixture" is a preparation, compound, mixture, or substance containing a controlled substance, regardless of its purity.

Second, the defendant knew or believed that the substance sold was a controlled substance.[7]

Third, the defendant's sale of ______ was without lawful authority.

Fourth, one or more sales took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

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[1] List narcotic drug other than heroin. *See* M.S.A. § 152.022, subd. 1(1).

[2] *See* M.S.A. § 609.666, subd. 1.

[3] List violent crime as identified in the complaint. *See* M.S.A. § 152.01, subd. 24(1).

[4] List offense from M.S.A. § 609.11, subd. 9, as identified in the complaint. *See* M.S.A. § 609.229, subd. 1(1).

[5] *See* M.S.A. § 123.932, subd. 3, for the definition of a non-public school.

[6] "Correctional facility" is not defined in Chapter 152, so the committee has incorporated the definition found in M.S.A. § 241.021, subd. 1(f).

[7] The defendant need only know that it was a controlled substance and not what the exact scientific description of the controlled substance was. *See State v. Ali*, 775 N.W.2d 914 (Minn. App. 2009).

CRIMJIG 20.10

CONTROLLED SUBSTANCE CRIME IN THE SECOND DEGREE—SALE/MINORS—ELEMENTS

Caution: This model jury instruction is under review by the CRIMJIGS committee in light of the decision in *State v. Loveless*, 966 N.W.2d 493 (Minn. Ct. App. 2021), review granted (Minn. Dec. 14, 2021).

CRIMJIG 20.12

CONTROLLED SUBSTANCE CRIME IN THE SECOND DEGREE—SALE/SCHOOLS/PARKS/ PUBLIC HOUSING/DRUG TREATMENT FACILITY—ELEMENTS

Caution: This model jury instruction is under review by the CRIMJIGS committee in light of the decision in *State v. Loveless*, 966 N.W.2d 493 (Minn. Ct. App. 2021), review granted (Minn. Dec. 14, 2021).

Replace current Jury Instruction with the following text, Footnotes, and Comments:

The elements of a controlled substance crime in the second degree are:

First, the defendant unlawfully sold (any amount of ________[1]) (one or more mixtures containing methamphetamine or amphetamine) (one or more mixtures of a total weight of five kilograms or more containing marijuana or tetrahydrocannabinols).

"To sell" means to sell, give away, barter, deliver, exchange, distribute, or dispose of to another, to offer or agree to do the same, to possess with intent to do the same, or to manufacture. ["To manufacture" means and includes the production, cultivation, quality control, and standardization of drugs by mechanical, physical, chemical, or pharmaceutical means, their packing, repacking, tableting, encapsulating, labeling, relabeling, filling, or other processing.] A "mixture" is a preparation, compound, mixture, or substance containing a controlled substance, regardless of its purity.

Second, the defendant knew or believed that the substance sold was ________ (a controlled substance).[2]

Third, the sale occurred in a [school zone] [park zone] [public housing zone] [drug treatment facility].

[A "school zone" is any property owned, leased, or

controlled by a school district or an organization operating a nonpublic school[3] where an elementary, middle, or secondary school, secondary vocational center, or other school providing educational services for grades one through twelve is located or used for educational purposes, or where extracurricular or co-curricular activities are regularly provided.] [A "school zone" also includes the area surrounding the school property to a distance of 300 feet or one city block, whichever is greater, beyond the school property. This includes the entire area of a city block located adjacent to or diagonally to the school property.[4]] [A "school zone" also includes the area within a school bus when the school bus[5] is being used to transport one or more elementary of secondary school students.] [A "park zone" is an area designated as a public park by the federal government, the state, a local unit of government, a park district board, or a park and recreation board in a city of the first class. "Park zone" includes the area within (three hundred feet) (or) (one city block,) (whichever distance is greater,) of the park boundary.] [A "public housing zone" is a public housing project or development administered by a local housing agency, plus the area within (three hundred feet of the property's boundary,) (or) (one city block,) (whichever distance is greater).] [A "drug treatment facility" means a residential drug treatment facility, and includes any property owned, leased, or controlled by the facility.]

Fourth, the defendant's sale was unlawful. (The defendant had no legal authority to sell ____.)

Fifth, defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 152.022, subd. 1(7).

A sale requires more than a temporary surrender of the controlled substance. *Barrow v. State*, 862 N.W.2d 686 (Minn. 2015).

In cities where no grid system is present, the term "one city block" does not apply and the transaction must take place within 300 feet of the park for the statute to apply. *See State v. Estrella*, 700 N.W.2d 496 (Minn. App. 2005).

When land surrounding a public park is divided into rectangular blocks bounded by city streets, the area "within one city block . . . of the park boundary" include the entire area of block adjacent to the park. *State v. Carufel*, 783 N.W.2d 539 (Minn. 2010) (a controlled substance case). This holding would presumably also apply to a school zone or public housing zone.

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[1] The Schedule I or II narcotic, LSD, 3,4 methylenedioxy amphetamine, [illegible] or [illegible] 3,4 methylenedioxymetamphetamine.

[2] The defendant need only know that it was a controlled substance and not what the exact scientific description of the controlled substance was. *See State v. Ali*, 775 N.W.2d 914 (Minn. App. 2009). "To know" only requires that the defendant believes that the specific fact exists under Minn. Stat. § 609.02, subd. 9.

[3] *See* Minn. Stat. § 123B.41, subd. 9 for the definition of a "nonpublic school."

[4] *LaPenotiere v. State*, 916 N.W.2d 351 (Minn. 2018).

[5] *See* Minn. Stat. § 169.011, subd. 71, for the definition of a school bus.

CRIMJIG 20.13

CONTROLLED SUBSTANCE CRIME IN SECOND DEGREE—POSSESSION—DEFINED

Replace the current Jury Instruction with the following text:

Under Minnesota law, whoever unlawfully possesses

[1] one or more mixtures of a total weight of twenty-five grams or more containing (cocaine) (methamphetamine),

[2] one or more mixtures of a total weight of ten grams or more containing (cocaine) (methamphetamine) and [*choose one*]

[A] that person or an accomplice [possessed a firearm on their person or within immediate reach] [(brandished)(displayed)(threatened a person with)(otherwise employed) a firearm]

[B] the offense involves [at least three of the following aggravating factors:] [the following three aggravating factors:]

[1] the defendant, within the previous ten years, has been convicted of ________[1].

[2] the offense was committed for the benefit of a criminal gang [; and]

[3] the offense involved separate acts of sale or possession of (cocaine) (methamphetamine) in three or more counties [; and]

[4] the offense involved the transfer of (cocaine) (methamphetamine) across the (state)(international) border and into Minnesota [; and]

[5] the offense involved at least three separate transactions in which (cocaine) (methamphet-

amine) (was)(were) (sold) (transferred) (possessed with intent to (sell) (transfer)) [; and]

[6] the circumstances of the offense reveal the defendant to have occupied a high position in the drug distribution hierarchy [; and]

[7] the defendant used a position or status to facilitate the commission of the offense, including a position of (trust) (confidence) (fiduciary relationship) [; and]

[8] the offense involved the sale of (cocaine) (methamphetamine) to (a person under the age of eighteen)(a vulnerable adult) [; and]

[9] the defendant or an accomplice manufactured, possessed, or sold (cocaine) (methamphetamine) in a school zone, park zone, correctional facility, or drug treatment facility [; and]

[10] the defendant or an accomplice possessed (equipment) (drug paraphernalia) (documents) (money) evidencing that the offense involved the (cultivation) (manufacture) (distribution) (possession) of (cocaine) (methamphetamine) in quantities substantially larger than ten grams.

[3] one or more mixtures of a total weight of six grams or more containing heroin

[4] one or more mixtures of a total weight of fifty grams or more containing ________[2]

[5] one or more mixtures of a total weight of fifty grams or more containing (amphetamine) (phencyclidine) (hallucinogen)

[6] one hundred or more dosage units of a mixture containing (amphetamine) (phencyclidine) (hallucinogen).

[7] one or more mixtures of a total weight of twenty-five kilograms or more containing (marijuana) (tetrahydrocannabinols)

[8] one hundred or more marijuana plants

is guilty of a crime.

---

[1] List violent crime as identified in the complaint. *See* M.S.A. § 152.01, subd. 24(1).

[2] List narcotic drug other than cocaine, heroin, or methamphetamine. *See* M.S.A. § 152.022, subd. 2(a)(4).

CRIMJIG 20.14

CONTROLLED SUBSTANCE CRIME IN THE SECOND DEGREE—POSSESSION—ELEMENTS

Caution: This model jury instruction is under review by the CRIMJIGS committee in light of the decision in *State v. Loveless*, 966 N.W.2d 493 (Minn. Ct. App. 2021), review granted (Minn. Dec. 14, 2021).

Replace the current Jury Instruction with the following text:

The elements of a controlled substance crime in the second degree are:

First, the defendant knowingly possessed

[1] one or more mixtures of a total weight of twenty-five grams or more containing (cocaine) (methamphetamine).

[2] one or more mixtures of a total weight of ten grams or more containing (cocaine) (methamphetamine) and [*choose one*][1]

[A] (the defendant)(an accomplice) [possessed a firearm on their person or within immediate reach] [(brandished)(displayed)(threatened a person with)(otherwise employed) a firearm] [*refer to and add CRIMJIG 2.09 for definition of accomplice*]. [A "firearm" means a device designed to be used as a weapon, from which is expelled a projectile by the force of any explosion or force of combustion.]

[B] the offense involved [at least three of the following aggravating factors:][the following three aggravating factors:]

[1] the defendant, within the previous ten years, has been convicted of ________[2] [; and]

[2] the offense was committed for the benefit of

a criminal gang. A "criminal gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, that has as one of its primary activities the commission of one or more of the crimes of ________________,[3] has a common name or common identifying symbol, and includes members who individually or collectively engage in a pattern of criminal activity [; and]

[3] the offense involved separate acts of sale or possession of (cocaine) (methamphetamine) in three or more counties, specifically: ________, ________, and ________, counties [; and]

[4] the offense involved the transfer of (cocaine) (methamphetamine) across the (state)(international) border and into Minnesota [; and]

[5] the offense involved at least three separate transactions in which (cocaine) (methamphetamine) (was)(were) (sold) (transferred) (possessed with intent to (sell) (transfer)) [; and]

[6] the circumstances of the offense reveal the defendant to have occupied a high position in the drug distribution hierarchy [; and]

[7] the defendant used a position or status to facilitate the commission of the offense, including a position of (trust) (confidence) (fiduciary relationship) [A fiduciary relationship exists when a person, referred to as the fiduciary, holds a superior position of authority and control over the property of another person referred to as the principal, and in whom the principal places a high level of trust and confidence.] [; and]

[8] the offense involved the sale of (cocaine)

(methamphetamine) to ____________________, who is[under the age of eighteen] [a vulnerable adult] [A "vulnerable adult" is a person who is 18 years of age or older who (is a resident inpatient of a facility) (receives services at or from a facility required to be licensed by the Commissioner of Human Services to serve adults, except that a person who receives outpatient services for treatment of chemical dependency or mental illness or who has been committed as a sexual psychopathic personality or sexually dangerous person is not considered a vulnerable adult unless that person possesses a physical or mental infirmity or there is physical or mental emotional dysfunction that impairs the person's ability to provide adequately for his or her own care without assistance, including the provision of food, shelter, clothing, health care, or supervision, and, because of the dysfunction or infirmity and the need for assistance, has an impaired ability to protect self from maltreatment) (receives services from a home care provider licensed by the Commissioner of Human Services or from a person or organization that exclusively offers, provides, or arranges for personal care assistance services) (regardless of residence or whether any type of service is received, possesses a physical or mental infirmity or other physical, mental, or emotional dysfunction that impairs the person's ability to provide adequately for his or her care without assistance, including the provision of food, shelter, clothing, health care, or supervision, and, because of the dysfunction or infirmity and the need for assistance, has an impaired ability to protect self from maltreatment)] [; and]

[9] the defendant or an accomplice (manufac-

tured)(possessed) (sold) (cocaine) (methamphetamine) in a (school zone)(park zone)(correctional facility)(drug treatment facility) [A "school zone" is any property owned, leased, or controlled by a school district or an organization operating a nonpublic school[4] where an elementary, middle, or secondary school, secondary vocational center, or other school providing educational services for grades one through twelve is located or used for educational purposes, or where extracurricular or co-curricular activities are regularly provided.] [A school zone also includes the area surrounding the school property to a distance of 300 feet or one city block, whichever is greater, beyond the school property.] [A school zone also includes the area within a school bus when the school bus is being used to transport one or more elementary of secondary school students.] [A "park zone" is an area designated as a public park by the federal government, the state, a local unit of government, a park district board, or a park and recreation board in a city of the first class. Park zone includes the area (within three hundred feet) (or) (one city block,) (whichever distance is greater,) of the park boundary.] [A "correctional facility" means any facility, including a group home, having a residential component, the primary purpose of which is to serve persons placed therein by a court, court services department, parole authority, or other correctional agency having dispositional power over persons charged with, convicted, or adjudicated to be guilty or delinquent.[5]] [A "drug treatment facility" means a residential treatment facility, and includes any property owned, leased, or controlled by the facility.] [*refer to and add CRIMJIG 2.09 for definition of accomplice*] [; and]

[10] the defendant or an accomplice possessed (equipment) (drug paraphernalia) (documents) (money) evidencing that the offense involved the (cultivation) (manufacture) (distribution) (possession) of (cocaine) (methamphetamine) in quantities substantially larger than twenty-five grams. [*refer to and add CRIMJIG. 2.09 for definition of accomplice*].

[3] one or more mixtures of a total weight of six grams or more containing heroin.

[4] one or more mixtures of a total weight of fifty grams or more containing ________[6]

[5] one or more mixtures of a total weight of fifty grams or more containing (amphetamine) (phencyclidine)(hallucinogen).

[6] one hundred or more dosage units of a mixture containing (amphetamine) (phencyclidine) (hallucinogen).

[7] one or more mixtures of a total weight of twenty-five kilograms or more containing (marijuana) (tetrahydrocannabinols).

[8] one hundred or more marijuana plants.

"To know" requires only that the defendant believes that the specified fact exists.

A "mixture" is a preparation, compound, mixture, or substance containing a controlled substance, regardless of its purity. [The weight of a mixture includes the fluid in a water pipe ("bong") only if the mixture contains four or more fluid ounces of fluid.[7]]

[The law recognizes two kinds of possession: "actual possession" and "constructive possession." A person is in actual possession of ________ (the controlled substance) if (he) (she) has it on (his) (her) person or is exercising direct physical control over ______ (the controlled substance) at a given time. A person is in constructive possession of ______ (the controlled substance) if ______ (the controlled substance) was in a place under (his) (her) exclusive control to which other people did not normally have access, or if found in a place to which others had access, the person knowingly exercised dominion and control over ______ (the controlled substance[8]). You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that the defendant had actual or constructive possession.]

[The law also recognizes that possession may be either exclusive or joint. If one person alone has actual or constructive possession of ______ (a controlled substance), possession is exclusive. If two or more persons share actual or constructive possession of ______ (controlled substance), possession is joint. You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that defendant had actual or constructive possession of ______ (the controlled substance), whether exclusively or jointly with others.]

Second, the defendant knew or believed that the substance possessed was a controlled substance.[9]

Third, the defendant's possession of ______ was without lawful authority.

Fourth, the defendant's act took place on (or about) ______ in ______ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

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[1] *See* M.S.A. § 609.666, subd. 1.

[2] List violent crime as identified in the complaint. *See* M.S.A. § 152.01, subd. 24(1).

[3] List offense from M.S.A. § 609.11, subd. 9, as identified in the complaint. *See* M.S.A. § 609.229, subd. 1(1).

[4] *See* M.S.A. § 123.932, subd. 3, for the definition of a non-public school.

[5] "Correctional facility" is not defined in Chapter 152, so the committee has incorporated the definition found in M.S.A § 241.021, subd. 1(f).

[6] List narcotic drug other than cocaine, heroin, or methamphetamine. *See* M.S.A. § 152.022, subd. 2(a)(4).

[7] *See State v. Peck*, 773 N.W.2d 768 (Minn. 2009) and M.S.A. § 152.022, subd. 2(b), modifying *Peck*.

[8] In *State v. Hunter*, 857 N.W.2d 537 (Minn. App. 2014) the Court of Appeals indicated that the use of the pronoun "it" created an ambiguity in the previous version of this instruction. It is recommended the item possessed be particularly identified throughout the instruction.

[9] The defendant need only know that it was a controlled substance and not what the exact scientific description of the controlled substance was. *See State v. Ali*, 775 N.W.2d 914 (Minn. App. 2009).

CRIMJIG 20.15

CONTROLLED SUBSTANCE CRIME IN THE THIRD DEGREE—SALE—DEFINED

COMMENT

Add the following text as the third paragraph to the Comment:

The Supreme Court, in *Barrow v. State*, 862 N.W.2d 686 (Minn. 2015), held that defendant's transfer of drugs to his wife to conceal his possession of the drugs did not constitute a "sale" within the meaning of the statute. Defendant did not give up his interest in the cocaine for her use but to hide it, so the "give away" portion of the definition of "sell" was not satisfied. In order to find a "sale," the fact-finder must find a surrender of the defendant's possessory interest.

Research References

West's Key Number Digest
Drugs and Narcotics ⚿68

Legal Encyclopedias
C.J.S., Drugs and Narcotics §§ 158, 163, 178, 181 to 182, 193

CRIMJIG 20.18

CONTROLLED SUBSTANCE CRIME IN THE THIRD DEGREE—CONSPIRACY/MINOR—ELEMENTS

Caution: This model jury instruction is under review by the CRIMJIGS committee in light of the decision in *State v. Loveless*, 966 N.W.2d 493 (Minn. Ct. App. 2021), review granted (Minn. Dec. 14, 2021).

CRIMJIG 20.19

CONTROLLED SUBSTANCE CRIME IN THE THIRD DEGREE—POSSESSION—DEFINED

Replace the current Jury Instruction with the following text:

Under Minnesota law, whoever, on one or more occasions within a ninety-day period, unlawfully possesses

[1] one or more mixtures of a total weight of ten grams or more containing ________.[1]

[2] one or more mixtures of a total weight of three grams or more containing heroin.

[3] fifty or more dosage units of a mixture containing ____________________.[2]

[4] one or more mixtures of a total weight of ten kilograms or more containing (marijuana) (tetrahydrocannabinols).

is guilty of a crime.

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[1] Insert narcotic drug other than heroin as identified in the complaint. *See* M.S.A. § 152.023, subd. 2(a)(1).

[2] Insert narcotic drug as identified in the complaint. *See* M.S.A. § 152.023, subd. 2(a)(3).

CRIMJIG 20.20

CONTROLLED SUBSTANCE CRIME IN THE THIRD DEGREE—POSSESSION—ELEMENTS

Caution: This model jury instruction is under review by the CRIMJIGS committee in light of the decision in *State v. Loveless*, 966 N.W.2d 493 (Minn. Ct. App. 2021), review granted (Minn. Dec. 14, 2021).

Replace the current Jury Instruction with the following text:

The elements of possession of a controlled substance crime in the third degree are:

First, the defendant on one or more occasions within a ninety-day period knowingly possessed

[1] one or more mixtures of a total weight of ten grams or more containing ________.[1]

[2] one or more mixtures of a total weight of three grams or more containing heroin.

[3] fifty or more dosage units of a mixture containing ________.[2]

[4] one or more mixtures of a total weight of ten kilograms or more containing (marijuana) (tetrahydrocannabinols).

"To know" requires only that the defendant believes that the specified fact exists.

A "mixture" is a preparation, compound, mixture, or substance containing a controlled substance, regardless of its purity. [The weight of a mixture includes the fluid in a water pipe ("bong") only if the mixture contains four or more fluid ounces of fluid.[3]**]**

[The law recognizes two kinds of possession: "actual possession" and "constructive possession." A person is

in actual possession of ______ (the controlled substance) if (he) (she) has it on (his) (her) person or is exercising direct physical control over ______ (the controlled substance) at a given time. A person is in constructive possession of ______ (the controlled substance) if ______ (the controlled substance) was in a place under (his) (her) exclusive control to which other people did not normally have access, or if found in a place to which others had access, the person knowingly exercised dominion and control over ______ (the controlled substance[4]). You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that the defendant had actual or constructive possession.]

[The law also recognizes that possession may be either exclusive or joint. If one person alone has actual or constructive possession of ______ (a controlled substance), possession is exclusive. If two or more persons share actual or constructive possession of ______ (controlled substance), possession is joint. You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that defendant had actual or constructive possession of ______ (the controlled substance), whether exclusively or jointly with others.]

Second, the defendant knew or believed that the substance possessed was a controlled substance.[5]

Third, the defendant's possession of ______ was without lawful authority.

Fourth, the defendant's act took place on (or about) ______ in ______ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

[1] Insert narcotic drug other than heroin as identified in the complaint. *See* M.S.A. § 152.023, subd. 2(a)(1).

[2] Insert narcotic drug as identified in the complaint. *See* M.S.A. § 152.023, subd. 2(a)(3).

[3] *See State v. Peck*, 773 N.W.2d 768 (Minn. 2009) and M.S.A. § 152.023, subd. 2(b), modifying *Peck*.

[4] In *State v. Hunter*, 857 N.W.2d 537 (Minn. App 2015), the Court of Appeals indicated that the use of the pronoun "it" created an ambiguity in the previous version of this instruction. It is recommended the item possessed be particularly identified throughout the instruction.

[5] The defendant need only know that it was a controlled substance and not what the exact scientific description of the controlled substance was. *See State v. Ali*, 775 N.W.2d 914 (Minn. App. 2009).

CRIMJIG 20.22

CONTROLLED SUBSTANCE CRIME IN THE THIRD DEGREE—POSSESSION IN SCHOOL/PARK/PUBLIC HOUSING ZONE/DRUG TREATMENT FACILITY—ELEMENTS

Caution: This model jury instruction is under review by the CRIMJIGS committee in light of the decision in *State v. Loveless*, 966 N.W.2d 493 (Minn. Ct. App. 2021), review granted (Minn. Dec. 14, 2021).

Replace the current Jury Instruction with the following text, Footnotes, and Comments:

The elements of a controlled substance crime in the third degree are:

First, the defendant knowingly possessed ((any amount of ________[1] on one or more occasions within a 90-day period) (five or more dosage units of ________[2] on one or more occasions within a 90-day period) (one or more mixtures containing (amphetamine) (or) (methamphetamine). "To know" requires only that the defendant believes that the specified fact exists.)

[A "mixture" is a preparation, compound, mixture, or substance containing a controlled substance, regardless of its purity. [The weight of a mixture includes the fluid in a water pipe ("bong") only if the mixture contains four or more fluid ounces of fluid.[3]]]

[The law recognizes two kinds of possession: "actual possession" and "constructive possession." A person is in actual possession of ________ (the controlled substance) if (he) (she) has it on (his) (her) person or is exercising direct physical control over ________ (the controlled substance) at a given time. A person is in constructive possession of ________ (the controlled substance) if ________ (the controlled substance) was in a place under (his) (her) exclusive control to which other people did not normally have access, or if found in a place to which oth-

ers had access, the person knowingly exercised dominion and control over ______ (the controlled substance[4]). You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that the defendant had actual or constructive possession.]

[The law also recognizes that possession may be either exclusive or joint. If one person alone has actual or constructive possession of ______ (a controlled substance), possession is exclusive. If two or more persons share actual or constructive possession of ______ (a controlled substance), possession is joint. You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that defendant had actual or constructive possession of ______ (the controlled substance), whether exclusively or jointly with others.]

Second, the defendant knew or believed that the substance the defendant possessed was ______ (a controlled substance).[5]

Third, the defendant possessed the ______ (controlled substance) in a [school zone] [park zone] [public housing zone] [drug treatment facility].

[A "school zone" is any property owned, leased, or controlled by a school district or an organization operating a nonpublic school[6] where an elementary, middle, or secondary school, secondary vocational center, or other school providing educational services for grades one through twelve is located or used for educational purposes, or where extracurricular or co-curricular activities are regularly provided.] [A school zone also includes the area surrounding the school property to a distance of 300 feet or one city block, whichever is greater, beyond the school property.] [A school zone also includes the area within a school bus when the school bus[7] is being used to transport one or more elementary of secondary school students.] [A "park zone" is an area designated as a pub-

lic park by the federal government, the state, a local unit of government, a park district board, or a park and recreation board in a city of the first class. "Park zone" includes the area within (three hundred feet) (or) (one city block,) (whichever distance is greater,) of the park boundary.] [A "public housing zone" is a public housing project or development administered by a local housing agency, plus the area within (three hundred feet of the property's boundary,) (or) (one city block,) (whichever distance is greater).] [A "drug treatment facility" is a licensed residential drug treatment facility, and includes property owned, leased, or controlled by the facility.]

Fourth, the defendant's possession of _______ was without lawful authority.

Fifth, the defendant's act took place on (or about) _______ in _______ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

M.S.A. § 152.023, subds. 2(4) and 2(6).

The requirements for constructive possession are drawn from *State v. Mollberg*, 310 Minn. 376, 246 N.W.2d 463 (1976), and *State v. Florine*, 303 Minn. 103, 226 N.W.2d 609 (1975). Possession need not be by the defendant alone, but may be shared with others. *State v. LaBarre*, 292 Minn. 228, 195 N.W.2d 435 (1972). *See also State v. Hunter*, 857 N.W.2d 537 (Minn. App. 2014), in which the Court of Appeals held that possession requires dominion and control over the controlled substance and not the place where the controlled substance is found.

In cities where no grid system is present, the term "one city block" does not apply and the transaction must take place within 300 feet of the park for the statute to apply. *See State v. Estrella*, 700 N.W.2d 496 (Minn. App. 2005).

When land surrounding a public park is divided into rectangular blocks bounded by city streets, the area "within one city block . . . of the park boundary" include the entire area of block adjacent to the park. *State v. Carufel*, 783 N.W.2d 539 (Minn. 2010) (a controlled substance case). This holding would presumably also apply to a school zone or public housing zone.

The Supreme Court, in *State v. Benniefield*, 678 N.W.2d 42 (Minn. 2004), held that the State is not required to prove that a defendant knew that he was in a school zone or intended to commit the crime in a school zone.

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[1] The Schedule I or II narcotic drug alleged in the complaint.

[2] LSD, 3,4 methylenedioxy amphetamine, or 3,4 methylenedioxyamphetamine.

[3] *See State v. Peck*, 773 N.W.2d 768 (Minn. 2009) and M.S.A. § 152.021, subd. 2(b), modifying *Peck*.

[4] In *State v. Hunter*, 857 N.W.2d 537 (Minn. App 2014), the Court of Appeals indicated that the use of the pronoun "it" created an ambiguity in the previous version of this instruction. It is recommended the item possessed be particularly identified throughout the instruction.

[5] The defendant need only know that it was a controlled substance and not what the exact scientific description of the controlled substance was. *See State v. Ali*, 775 N.W.2d 914 (Minn. App. 2009). "To know" only requires that the defendant believes that the specific fact exists under M.S.A. § 609.02, subd. 9.

[6] *See* Minn. Stat. § 123B.41, subd. 9 for the definition of a "nonpublic school."

[7] *See* M.S.A. § 169.011, subd. 71, for the definition of a school bus.

CRIMJIG 20.24

CONTROLLED SUBSTANCE CRIME IN THE FOURTH DEGREE—SALE—ELEMENTS

Caution: This model jury instruction is under review by the CRIMJIGS committee in light of the decision in *State v. Loveless*, 966 N.W.2d 493 (Minn. Ct. App. 2021), review granted (Minn. Dec. 14, 2021).

CRIMJIG 20.26

CONTROLLED SUBSTANCE CRIME IN THE FOURTH DEGREE—SALE TO A MINOR—ELEMENTS

Caution: This model jury instruction is under review by the CRIMJIGS committee in light of the decision in *State v. Loveless*, 966 N.W.2d 493 (Minn. Ct. App. 2021), review granted (Minn. Dec. 14, 2021).

CRIMJIG 20.27

CONTROLLED SUBSTANCE CRIME IN THE FOURTH DEGREE—SALE—SCHOOL/PARK/PUBLIC HOUSING ZONE/DRUG TREATMENT FACILITY—DEFINED

COMMENT

Replace Comment two with the following text:

See Minn. Stat. § 123B.41, subd. 9 for the definition of a “nonpublic school.”

CRIMJIG 20.28

CONTROLLED SUBSTANCE CRIME IN THE FOURTH DEGREE—SALE—SCHOOL/PARK/PUBLIC HOUSING ZONE—ELEMENTS

Caution: This model jury instruction is under review by the CRIMJIGS committee in light of the decision in *State v. Loveless*, 966 N.W.2d 493 (Minn. Ct. App. 2021), review granted (Minn. Dec. 14, 2021).

n. 1.

Replace Footnote one with the following text:

See Minn. Stat. § 123B.41, subd. 9 for the definition of a "nonpublic school."

CRIMJIG 20.32

CONTROLLED SUBSTANCE CRIME IN THE FOURTH DEGREE—POSSESSION—ELEMENTS

Replace the current Jury Instruction with the following text:

The elements of controlled substance crime in the fourth degree are:

First, the defendant knowingly possessed one or more mixtures of (phencyclidine) (or) (a hallucinogen).

[The law recognizes two kinds of possession: "actual possession" and "constructive possession." A person is in actual possession of ______ (the controlled substance) if (he) (she) has it on (his) (her) person or is exercising direct physical control over ______ (the controlled substance) at a given time. A person is in constructive possession of ______ (the controlled substance) if ______ (the controlled substance) was in a place under (his) (her) exclusive control to which other people did not normally have access, or if found in a place to which others had access, the person knowingly exercised dominion and control over ______ (the controlled substance). You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that the defendant had actual or constructive possession.]

[The law also recognizes that possession may be either exclusive or joint. If one person alone has actual or constructive possession of ______ (a controlled substance), possession is exclusive. If two or more persons share actual or constructive possession of ______ (controlled substance), possession is joint. You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that defendant had actual or constructive possession of ______ (the controlled substance), whether exclusively or jointly with others.]

A "mixture" is a preparation, compound, mixture, or substance containing a controlled substance, regardless of its purity.

"To know" requires only that the defendant believes that the specified fact exists.

Second, the (phencyclidine) (or) (hallucinogen) was packaged in dosage units and equaled ten or more dosage units of ________.[1]

Third, the defendant knew or believed that the substance the defendant possessed was ________ (a controlled substance).[2]

Fourth, the defendant's possession of ________ was without lawful authority.

Fifth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

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[1] Phencyclidine or a hallucinogen.

[2] The defendant need only know that it was a controlled substance and not what the exact scientific description of the controlled substance was. *See State v. Ali*, 775 N.W.2d 914 (Minn. App. 2009). "To know" only requires that the defendant believes that the specific fact exists under M.S.A. § 609.02, subd. 9.

CRIMJIG 20.33

CONTROLLED SUBSTANCE CRIME IN THE FIFTH DEGREE—SALE—MARIJUANA OR SCHEDULE IV—DEFINED

Replace Current Instruction and Comment with the following text:

Under Minnesota law, whoever unlawfully sells one or more mixtures containing ((marijuana) (or) (tetrahydrocannabinols) (except a small amount of marijuana for no remuneration)) (____[1]) is guilty of a crime.

COMMENT

Minn. Stat. § 152.025, subd. 1.

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[1] A Schedule IV controlled substance.

CRIMJIG 20.34

CONTROLLED SUBSTANCE CRIME IN THE FIFTH DEGREE—SALE—MARIJUANE OR SCHEDULE IV—ELEMENTS

Caution: This model jury instruction is under review by the CRIMJIGS committee in light of the decision in *State v. Loveless*, 966 N.W.2d 493 (Minn. Ct. App. 2021), review granted (Minn. Dec. 14, 2021).

Replace Current Instruction and Comment with the following text:

The elements of sale of a controlled substance crime in the fifth degree are:

First, the defendant sold one or more mixtures containing (marijuana or tetrahydrocannabinols) (————[1]).

> **"To sell" means to sell, give away, barter, deliver, exchange, distribute, or dispose of to another, to offer or agree to do the same, to possess with intent to do the same, or to manufacture. ["To manufacture" means and includes the production, cultivation, quality control, and standardization of drugs by mechanical, physical, chemical, or pharmaceutical means, their packing, repacking, tableting, encapsulating, labeling, relabeling, filling, or other processing.]**

A "mixture" is a preparation, compound, mixture, or substance containing a controlled substance, regardless of its purity.

Second, the defendant knew or believed that the substance the defendant sold was a controlled substance.[2]

> **"To know" requires only that the defendant believes that the specified fact exists.[3]**

[Third, the amount of marijuana or tetrahydrocannabinols sold was (over 42.5 grams) (or) the amount was 42.5 grams or less and the defendant received remuneration for the marijuana.[4]

"Marijuana" means all parts of the plant of any species of the genus Cannabis, including all agronomical varieties, whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin, but shall not include the mature stalks of such plant, fiber from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks, except the resin extracted therefrom, fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination. "Marijuana" does not include hemp.[5]

"Remuneration" means payment of money or other compensation.]

(Third) (Fourth), the defendant's sale was without lawful authority.

(Fourth) (Fifth), the defendant's act took place on (or about) ——, in —— County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 152.025, subd. 1.

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[1] A Schedule IV controlled substance.

[2] The defendant need only know that it was a controlled substance and not what the exact scientific description of the controlled substance was. *See State v. Ali*, 775 N.W.2d 914, 919 (Minn. Ct. App. 2009).

[3] Minn. Stat. § 609.02, subd. 9(2).

[4] *See* Minn. Stat. § 152.01, subd. 16 (defining "small amount").

[5] Minn. Stat. § 152.01, subd. 9.

CRIMJIG 20.35

CONTROLLED SUBSTANCE CRIME IN THE FIFTH DEGREE—POSSESSION—DEFINED

Replace Current Instruction and Comment with the following text:

Under Minnesota law, whoever unlawfully possesses one or more mixtures containing [insert name of Schedule I, II, III or IV controlled substance] is guilty of a crime.

COMMENT

Minn. Stat. § 152.025, subd. 2(1).

CRIMJIG 20.36

CONTROLLED SUBSTANCE CRIME IN THE FIFTH DEGREE—POSSESSION—ELEMENTS

Caution: This model jury instruction is under review by the CRIMJIGS committee in light of the decision in *State v. Loveless*, 966 N.W.2d 493 (Minn. Ct. App. 2021), review granted (Minn. Dec. 14, 2021).

Replace Current Instruction and Comment with the following text:

The elements of this crime are:

First, the defendant knowingly possessed one or more mixtures containing ____.[1]

> **[The law recognizes two kinds of possession: "actual possession" and "constructive possession." A person is in actual possession of ____ (the controlled substance) if (he) (she) has it on (his) (her) person or is exercising direct physical control over ____ (the controlled substance) at a given time. A person is in constructive possession of ____ (the controlled substance) if ____ (the controlled substance) was in a place under (his) (her) exclusive control to which other people did not normally have access, or if found in a place to which others had access, the person knowingly exercised dominion and control over ____ (the controlled substance). You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that the defendant had actual or constructive possession.][2]**

> **[The law also recognizes that possession may be either exclusive or joint. If one person alone has actual or constructive possession of ____ (a controlled substance), possession is exclusive. If two or more persons share actual or constructive possession of ____ (a controlled substance), possession is joint. You may find that the element of possession, as that term**

is used in these instructions, is present if you find beyond a reasonable doubt that defendant had actual or constructive possession of —— (the controlled substance), whether exclusively or jointly with others.][3]

A "mixture" is a preparation, compound, mixture, or substance containing a controlled substance, regardless of its purity.[4]

"To know" requires only that the defendant believes that the specified fact exists.[5]

[Second, the amount of marijuana possessed by the defendant was more than 42.5 grams.[6]

"Marijuana" means all parts of the plant of any species of the genus Cannabis, including all agronomical varieties, whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin, but shall not include the mature stalks of such plant, fiber from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks, except the resin extracted therefrom, fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination. "Marijuana" does not include hemp.[7]]

(Second) (Third), the defendant knew or believed that the substance the defendant possessed was a controlled substance.[8]

(Third) (Fourth), the defendant's possession of —— was without lawful authority.

(Fourth) (Fifth), the defendant's act took place on (or about) —— in —— County.

If you find that each of these elements has been proven

beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

If you find the defendant guilty, you have (an) additional issue(s) to determine, and (it) (they) will be put to you in the form of (a) question(s) on the verdict form.[9] The question(s) (is) (are):

Was the amount of heroin possessed by the defendant 0.05 grams or more?[10]

Was the amount of (*insert name of controlled substance other than heroin*) possessed by the defendant 0.25 grams or more?[11]

Was the defendant previously convicted of a violation of (Minnesota Statutes chapter 152) (or) (*insert statute constituting a similar offense in another jurisdiction*)?[12]

[For each question:] If you find the fact has been proven beyond a reasonable doubt, you must answer "yes." If you find the fact has not been proven beyond a reasonable doubt, you must answer "no."

COMMENT

Minn. Stat. § 152.025, subd. 2(1).

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[1] A Schedule I, II, III, or IV controlled substance except a small amount of marijuana.

[2] *See State v. Florine*, 226 N.W.2d 609, 611 (Minn. 1975).

[3] *See State v. LaBarre*, 195 N.W.2d 435, 441 (Minn. 1972).

[4] Minn. Stat. § 152.01, subd. 9a.

[5] Minn. Stat. § 609.02, subd. 9(2).

[6] The statute does not apply to a small amount of marijuana. *See* Minn. Stat. § 152.01, subd. 16 (defining "small amount").

[7] Minn. Stat. § 152.01, subd. 9.

[8] The defendant need only know that it was a controlled substance and not what the exact scientific description of the controlled substance was. *See State v. Ali*, 775 N.W.2d 914, 919 (Minn. Ct. App. 2009).

[9] Special verdict forms should include only the enhancing factors that correspond to the crime(s) charged in the complaint or permitted by the court as a lesser-included offense under Minn. Stat. § 609.04.

[10] This special interrogatory should be used if the defendant is charged with a felony based on the weight of the controlled substance, specifically heroin.

[11] This special interrogatory should be used if the defendant is charged with a felony based on the weight of the controlled substance other than heroin.

[12] This special interrogatory should be included when the defendant is charged with a felony violation based on a prior conviction. The defendant is entitled to stipulate to the existence of a prior conviction. *State v. Davidson*, 351 N.W.2d 8, 11 (Minn. 1984). Such a stipulation constitutes a waiver of jury trial on this element, and the defendant's waiver must be made personally and on the record. If the defendant has stipulated to the prior conviction, that information should not be presented to the jury, and this interrogatory should not be used.

CRIMJIG 20.38

CONTROLLED SUBSTANCE CRIME IN THE FIFTH DEGREE—PROCUREMENT BY FRAUD OR FALSE IMPERSONATION—ELEMENTS

Caution: This model jury instruction is under review by the CRIMJIGS committee in light of the decision in *State v. Loveless*, 966 N.W.2d 493 (Minn. Ct. App. 2021), review granted (Minn. Dec. 14, 2021).

CRIMJIG 20.42

OTHER CONTROLLED SUBSTANCE OFFENSE INCLUDING SALVIA DIVINORUM AND SYNTHETIC CANNABINOIDS—POSSESSION—ELEMENTS

Replace the current Jury Instruction with the following text:

The elements of possession of controlled substance offense are:

First, the defendant knowingly possessed one or more mixtures containing ____.[1]

A "mixture" is a preparation, compound, mixture, or substance containing a controlled substance, regardless of its purity.

"To know" requires only that the defendant believes that the specified fact exists.

[The law recognizes two kinds of possession: "actual possession" and "constructive possession." A person is in actual possession of ________ (the controlled substance) if (he) (she) has it on (his) (her) person or is exercising direct physical control over ________ (the controlled substance) at a given time. A person is in constructive possession of ________ (the controlled substance) if ________ (the controlled substance) was in a place under (his) (her) exclusive control to which other people did not normally have access, or if found in a place to which others had access, the person knowingly exercised dominion and control over ________ (the controlled substance). You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that the defendant had actual or constructive possession.]

[The law also recognizes that possession may be either exclusive or joint. If one person alone has actual or constructive possession of ________ (a controlled substance), possession is exclusive. If two or more persons

share actual or constructive possession of ______ (controlled substance), possession is joint. You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that defendant had actual or constructive possession of ______ (the controlled substance), whether exclusively or jointly with others.]

Second, the defendant knew or believed that the substance the defendant possessed was ______ (a controlled substance).[2]

Third, the defendant's possession of ______ was without lawful authority.

Fourth, the defendant's act took place on (or about) ____ in ____ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

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[1] A Schedule V controlled substance, salvia divinorum or synthetic cannabinoids.

[2] The defendant need only know that it was a controlled substance and not what the exact scientific description of the controlled substance was. *See State v. Ali*, 775 N.W.2d 914 (Minn. App. 2009). "To know" only requires that the defendant believes that the specific fact exists under M.S.A. § 609.02, subd. 9.

CRIMJIG 20.44

POSSESSION OF A SMALL AMOUNT OF MARIJUANA IN A MOTOR VEHICLE—ELEMENTS

Caution: This model jury instruction is under review by the CRIMJIGS committee in light of the decision in *State v. Loveless*, 966 N.W.2d 493 (Minn. Ct. App. 2021), review granted (Minn. Dec. 14, 2021).

Replace the current Jury Instruction with the following text:

The elements of (possession of) (keeping) (allowing to be kept) a small amount of marijuana in a motor vehicle are:

First, the defendant was (the owner of a private motor vehicle) (the driver of a private motor vehicle while the owner was not present).

[1] Second, the defendant possessed on (his) (her) person more than 1.4 grams of marijuana.

[The law recognizes two kinds of possession: "actual possession" and "constructive possession." A person is in actual possession of ________ (the controlled substance) if (he) (she) has it on (his) (her) person or is exercising direct physical control over ________ (the controlled substance) at a given time. A person is in constructive possession of ________ (the controlled substance) if ________ (the controlled substance) was in a place under (his) (her) exclusive control to which other people did not normally have access, or if found in a place to which others had access, the person knowingly exercised dominion and control over ________ (the controlled substance). You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that the defendant had actual or constructive possession.]

[The law also recognizes that possession may be either exclusive or joint. If one person alone has actual or

constructive possession of ________ (a controlled substance), possession is exclusive. If two or more persons share actual or constructive possession of ________ (controlled substance), possession is joint. You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that defendant had actual or constructive possession of ________ (the controlled substance), whether exclusively or jointly with others.]

[2] Second, the defendant knowingly (kept) (allowed to be kept) more than 1.4 grams of marijuana in the motor vehicle, within the area of the motor vehicle normally occupied by the driver or passengers. "To know" requires only that the defendant believes that the specified fact exists. [This area of the vehicle does not include the trunk of the motor vehicle, when such vehicle is equipped with a trunk or another area of the vehicle not normally occupied by the driver or passengers, if the vehicle is not equipped with a trunk. A utility or glove compartment is within the area occupied by the driver and passengers.]

Third, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CRIMJIG 20.46

(DELIVERY) (POSSESSION FOR DELIVERY) (MANUFACTURE FOR DELIVERY) OF DRUG PARAPHERNALIA—ELEMENTS

Caution: This model jury instruction is under review by the CRIMJIGS committee in light of 2021 legislative amendments.

Replace the current Jury Instruction with the following text:

The elements of (delivery)(possession for delivery-)(manufacture for delivery) of drug paraphernalia are:

First, the defendant knowingly or intentionally (delivered drug paraphernalia) (possessed drug paraphernalia for delivery) (manufactured drug paraphernalia for delivery).

"Drug paraphernalia" means equipment, products, and materials of any kind knowingly or intentionally used primarily in (1) manufacturing a controlled substance, (2) injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance, (3) testing the strength, effectiveness, or purity of a controlled substance, or (4) enhancing the effect of a controlled substance.

"To know" requires only that the defendant believes that the specified fact exists.

[The law recognizes two kinds of possession: "actual possession" and "constructive possession." A person is in actual possession of ________ (an item) if (he) (she) has it on (his) (her) person or is exercising direct physical control over ________ (the item) at a given time. A person is in constructive possession of ________ (an item) if ________ (the item) was in a place under (his) (her) exclusive control to which other people did not normally have access, or if found in a place to which others had access, the person knowingly exercised dominion and control over ________[1] (the item). You may find that the element of possession, as that term is used in these instruc-

tions, is present if you find beyond a reasonable doubt that the defendant had actual or constructive possession.]

[The law also recognizes that possession may be either exclusive or joint. If one person alone has actual or constructive possession of ______ (an item), possession is exclusive. If two or more persons share actual or constructive possession of ______ (an item), possession is joint. You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that defendant had actual or constructive possession of ______ (the item), whether exclusively or jointly with others.]

Second, the defendant knew or believed that the equipment, products, or materials (was) (were) drug paraphernalia.

Third, the defendant's act took place on (or about) ______ in ______ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

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[1] In *State v. Hunter*, 857 N.W.2d 537 (Minn. App 2014) the Court of Appeals indicated that the use of the pronoun "it" created an ambiguity in the previous version of this instruction. It is recommended the item possessed be particularly identified throughout the instruction.

COMMENT

Replace the second paragraph to the Comment with the following text:

The requirements for constructive possession are drawn from *State v. Mollberg*, 310 Minn. 376, 246 N.W.2d 463 (1976), and *State v. Florine*, 303 Minn. 103, 226 N.W.2d 609 (1975). Possession need not be by the defendant alone, but may be shared with others. *State v. LaBarre*, 292 Minn. 228, 195 N.W.2d 435 (1972). *See also State v. Hunter*, 857 N.W.2d 537 (Minn. App. 2014), in which the Court of Appeals held that possession requires dominion and control over the controlled substance and not the place where the controlled substance is found.

CRIMJIG 20.48

DELIVERY OF DRUG PARAPHERNALIA TO A MINOR—ELEMENTS

Caution: This model jury instruction is under review by the CRIMJIGS committee in light of 2021 legislative amendments.

CRIMJIG 20.50

ADVERTISEMENT OF DRUG PARAPHERNALIA—ELEMENTS

Caution: This model jury instruction is under review by the CRIMJIGS committee in light of 2021 legislative amendments.

CRIMJIG 20.54

PROHIBITED DRUGS—TAX STAMPS—ELEMENTS

Caution: This model jury instruction is under review by the CRIMJIGS committee in light of the decision in *State v. Loveless*, 966 N.W.2d 493 (Minn. Ct. App. 2021), review granted (Minn. Dec. 14, 2021).

CRIMJIG 20.61

GREAT BODILY HARM CAUSED BY DISTRIBUTION OF DRUGS—DEFINED

Replace Current Instruction and Comment with the following text:

Under Minnesota law, whoever proximately causes great bodily harm by, directly or indirectly, unlawfully and intentionally selling, giving away, bartering, delivering, exchanging, distributing, or administering [INSERT name of Schedule I or II controlled substance] is guilty of a crime.

COMMENT

Minn. Stat. § 609.228.

CRIMJIG 20.62

GREAT BODILY HARM CAUSED BY DISTRIBUTION OF DRUGS—ELEMENTS

Caution: This model jury instruction is under review by the CRIMJIGS committee in light of the decision in *State v. Loveless*, 966 N.W.2d 493 (Minn. Ct. App. 2021), review granted (Minn. Dec. 14, 2021).

Replace Current Instruction and Comment with the following text:

The elements of this crime are:

First, it must be proven that (the alleged victim) (____) suffered great bodily harm.

> **"Great bodily harm" means bodily harm that causes a high probability of death, causes serious permanent disfigurement, or causes a permanent or protracted loss or impairment of the function of any part of the body, or other serious bodily harm.[1]**

Second, the defendant directly or indirectly sold, gave away, bartered, delivered, exchanged, distributed, or administered [INSERT name of Schedule I or II controlled substance].[2]

> **[INSERT name of Schedule I or II controlled substance] is a controlled substance.**

Third, the defendant acted intentionally.[3]

> **"Intentionally" means that the defendant had a purpose to sell, give away, barter, deliver, exchange, distribute, or administer a controlled substance [or believed that (his) (her) act, if successful, would result in (him) (her) selling, giving away, bartering, delivering, exchanging, distributing, or administering a controlled substance]. In addition, the defendant, at the time of the act, must have had knowledge of those facts which were necessary to make the defendant's conduct criminal.[4]**

> **[It is not necessary that the defendant intended to cause great bodily harm, or that the defendant knew or believed that great bodily harm would result, but only that the defendant intended to sell, give away, barter, deliver, exchange, distribute, or administer the controlled substance.]**

Fourth, the defendant knew or believed that the substance sold, given away, bartered, delivered, exchanged, distributed, or administered was a controlled substance.[5]

Fifth, the defendant's act of selling, giving away, bartering, delivering, exchanging, distributing, or administering [INSERT name of Schedule I or II controlled substance] was without lawful authority.

Sixth, the defendant proximately caused great bodily harm to (the alleged victim) (____) by selling, giving away, bartering, delivering, exchanging, distributing, or administering [INSERT name of Schedule I or II controlled substance].

> **"To proximately cause" means to be a substantial causal factor in causing the great bodily harm. The defendant is criminally liable for all the consequences of (his) (her) actions that occur in the ordinary and natural course of events, including those consequences brought about by one or more intervening causes, if such intervening causes were the natural result of the defendant's acts. The fact that other causes contribute to the great bodily harm does not relieve the defendant of criminal liability. However, the defendant is not criminally liable if a "superseding cause" caused the great bodily harm. A "superseding cause" is a cause that comes after the defendant's acts, alters the natural sequence of events, and produces a result that would not otherwise have occurred.[6]**

Seventh, the defendant's acts took place on (or about) ____, in ____ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 609.228.

Where married persons jointly acquire and possess a controlled substance, one spouse may not be convicted of this offense based on distribution to the other spouse. *See State v. Carithers*, 490 N.W.2d 620, 622 (Minn. 1992); *State v. Schnagl*, 907 N.W.2d 188, 200 (Minn. Ct. App. 2017).

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[1] Minn. Stat. § 609.02, subd. 8.

[2] Whether a particular drug is a Schedule I or II controlled substance under Minn. Stat. § 152.02 is a question of law with which the jury is not concerned. *See State v. Ali*, 775 N.W.2d 914, 919 (Minn. Ct. App. 2009).

[3] As this is a felony offense, a *mens rea* requirement must be read into the statute. *See State v. Ndikum*, 815 N.W.2d 816, 819 (Minn. 2012).

[4] *See* Minn. Stat. § 609.02, subd. 9(3).

[5] In general, the State is not required to prove that the defendant knew the precise identity of the controlled substance. *See State v. Ali*, 775 N.W.2d 914, 919 (Minn. Ct. App. 2009). If, however, the defendant had lawful authority to sell one or more controlled substances, the jury should be instructed that the state must prove the defendant knew or believed that the substance sold or administered was one other than the substance(s) for which the defendant had lawful authority.

[6] *See State v. Smith*, 835 N.W.2d 1, 5 (Minn. 2013); *State v. Olson*, 435 N.W.2d 530, 534 (Minn. 1989); *State v. Smith*, 119 N.W.2d 838, 847-48 (Minn. 1962).

CRIMJIG 20.64

CONTROLLED SUBSTANCE CRIME—METHAMPHETAMINE MANUFACTURER—POSSESSION OF PRECURSORS—ELEMENTS

n. 1.

Replace footnote one with the following text:

See M.S.A. § 152.0262, subd. 1(b) for the list of reagents and precursors. *See State v. Winbush*, 912 N.W.2d 678 (Minn. App. 2018) (holding it is plain error to fail to instruct the jury as to which items in the defendant's possession are chemical reagents or precursors under Minn. Stat. § 152.0262, subd. 1(b)).

CRIMJIG 20.75

IMPORTING CONTROLLED SUBSTANCES ACROSS STATE BORDERS—ELEMENTS

Caution: This model jury instruction is under review by the CRIMJIGS committee in light of the decision in *State v. Loveless*, 966 N.W.2d 493 (Minn. Ct. App. 2021), review granted (Minn. Dec. 14, 2021).

CRIMJIG 20.77

IMPORTING CONTROLLED SUBSTANCES ACROSS STATE BORDERS—USE OF PERSON UNDER 18—ELEMENTS

Caution: This model jury instruction is under review by the CRIMJIGS committee in light of the decision in *State v. Loveless*, 966 N.W.2d 493 (Minn. Ct. App. 2021), review granted (Minn. Dec. 14, 2021).

D. CRIMES AGAINST THE GOVERNMENT AND THE ADMINISTRATION OF JUSTICE

CHAPTER 22

PERJURY

CRIMJIG 22.02

PERJURY—ACTION, HEARING, OR PROCEEDING—ELEMENTS

Replace the current jury instruction with the following text:

The elements of perjury are:

First, the defendant made the alleged statement(s) under oath (or affirmation) in ________. This (action) (hearing) (proceeding) was one in which the statement was (required) (authorized) to be made under oath or affirmation. (An "affirmation" is a solemn statement made as a substitute for a sworn statement by a person whose conscience will not permit the person to take an oath.)

Second, the statement was false.

Third, the statement was material. A statement is material if the statement has a natural tendency to influence or is capable of influencing the decision of the [decision-making body] [person] to whom it is made.

Fourth, the defendant did not believe the statement(s) to be true. [If you find the defendant made two statements under oath that are inconsistent, and you find the defendant could not have believed each of the statements, when made, to be true, you may find the defendant intentionally

made a false statement. It is not necessary for you to decide which statement was false.][1]

Fifth, the defendant knew that (he) (she) was under (oath) (affirmation).

Sixth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

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[1] Use the bracketed language when the case involves two inconsistent statements or affirmations.

COMMENT

Add the following language as the third paragraph of the Comment:

The definition of "material" is drawn from *State v. Burnett*, 867 N.W.2d 534 (Minn. App. 2015).

CRIMJIG 22.13

FALSE STATEMENT TO A PEACE OFFICER—DEFINED

Replace Current Instruction and Comment with the following text:

Under Minnesota law, whoever, with intent to obstruct justice, gives

[1] a fictitious name (other than a nickname)

[2] a false date of birth

[3] a false or fraudulently altered identification card

[4] the name and birth date of another

to a peace officer, when that officer makes inquiries incident to a lawful investigatory stop or lawful arrest, or inquiries incident to executing any other duty imposed by law, is guilty of a crime.

COMMENT

Minn. Stat. § 609.506, subds. 1, 2.

CRIMJIG 22.14

FALSE STATEMENT TO A PEACE OFFICER—ELEMENTS

Replace Current Instruction and Comment with the following text:

The elements of this crime are:

[1] First, the defendant gave a fictitious name (other than a nickname).

> [“Fictitious name” includes a name that uses only parts of a full legal name.[1]]

[2] First, the defendant gave a false date of birth.

[3] First, the defendant gave a false or fraudulently altered identification card.

[4] First, the defendant gave the name and birth date of another person.

Second, the defendant gave the (fictitious name) (false date of birth) (false or fraudulently altered identification care) (name and date of birth of another person) to a peace officer, when that officer was making (inquiries incident to a lawful investigatory stop) (a lawful arrest) (inquiries incident to executing any duty imposed by law).

Third, the defendant acted with intent to obstruct justice.

> “With intent to” means that the defendant either has a purpose to do the thing or cause the result specified, or believes that the act, if successful, will cause that result.[2]

Fourth, the defendant’s act took place on (or about) ____, in ____ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a rea-

sonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 609.506, subds. 1, 2.

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[1] *State v. Thompson*, 950 N.W. 2d 65, 68 (Minn. 2020).

[2] Minn. Stat. § 609.02, subd. 9 (4).

E. OTHER CRIMES

CHAPTER 28

GAME AND FISH VIOLATIONS

CRIMJIG 28.09

DEER BAITING—DEFINED

Replace the entire section with the following:

WITHDRAWN

CRIMJIG 28.10

DEER BAITING—ELEMENTS

Replace the entire section with the following:

WITHDRAWN

CRIMJIG 28.11

TAKING WILD ANIMALS WHILE UNDER THE INFLUENCE—DEFINED

Replace current Jury Instruction with the following Text and Comment:

Under Minnesota law, whoever takes wild animals with a firearm or by archery when the person

[1] is under the influence of alcohol,

[2] is under the influence of a controlled substance,

[3] is under the influence of a combination of alcohol and a controlled substance,

[4] has an alcohol concentration of 0.08 or more,

[5] has an alcohol concentration of 0.08 or more as measured within two hours of the time of hunting,

[6] is under the influence of an intoxicating substance and knows or has reason to know the substance has the capacity to cause impairment is guilty of a crime.

COMMENT

Minn. Stat. § 97B.065, subd. 1.

CRIMJIG 28.12

TAKING WILD ANIMALS WHILE UNDER THE INFLUENCE—ELEMENTS

Replace current Jury Instruction with the following Text, Comments, and Footnote:

The elements of this crime are:

First, the defendant took a wild animal with a firearm or by archery.

"To take" includes to pursue, shoot, kill, capture, trap, snare, spear or net or to attempt to do those things or assist another person in taking an animal.

[Insert CRIMJIG 5.02 on Attempt if appropriate.]

Second,

[1] at the time the defendant took the wild animal, the defendant was under the influence of alcohol.

If a person ingests alcohol and is not influenced by it, this element has not been proven. If, as a result of ingesting the alcohol, the person's ability or capacity to take a wild animal, is impaired, then this element has been proven.

There is no set standard as to the quantity of alcohol a person must ingest before being regarded as "under the influence." When a person is so affected by the alcohol that the person does not possess that clearness of intellect and control of (himself) (herself) as (he) (she) otherwise would have, that person is "under the influence."[1]

[2] at the time the defendant took the wild animal, the defendant was under the influence of a controlled substance. ________ is a controlled substance.

If a person ingests a substance and is not influenced by the substance, this element has not been proven. If, as

a result of ingesting the substance, the person's ability or capacity to take a wild animal, is impaired, then this element has been proven.

There is no set standard as to the quantity of a substance a person must ingest before being regarded as "under the influence." When a person is so affected by the substance that the person does not possess that clearness of intellect and control of (himself) (herself) as (he) (she) otherwise would have, that person is "under the influence."[2]

[3] at the time the defendant took the wild animal, the defendant was under the influence of a combination of alcohol and a controlled substance. (________ is a controlled substance).

If a person ingests a combination of alcohol and a controlled substance and is not influenced by it, this element has not been proven. If, as a result of ingesting the combination of alcohol and controlled substance, the person's ability or capacity to take a wild animal, is impaired, then this element has been proven.

There is no set standard as to the quantity of a combination of alcohol and controlled substance a person must ingest before being regarded as "under the influence." When a person is so affected by the combination of alcohol and controlled substance that the person does not possess that clearness of intellect and control of (himself) (herself) as (he) (she) otherwise would have, that person is "under the influence."[3]

[4] at the time the person took the wild animal, the defendant's alcohol concentration was 0.08 or more.

This means (the number of grams of alcohol per 100 milliliters of blood was 0.08 or more) (the number of grams of alcohol per 210 liters of breath was 0.08 or more) (the number of grams of alcohol per 67 milliliters of urine was 0.08 or more).

[5] within two hours of the time the defendant took the wild animal, the defendant's alcohol concentration was 0.08 or more.

An "alcohol concentration of 0.08 or more" means (the number of grams of alcohol per 100 milliliters of blood was 0.08 or more) (the number of grams of alcohol per 210 liters of breath was 0.08 or more) (the number of grams of alcohol per 67 milliliters of urine was 0.08 or more).

[6] at the time the defendant took the wild animal, the defendant was under the influence of an intoxicating substance and defendant knew or had reason to know that the substance had the capacity to cause impairment.

An "intoxicating substance" means a drug or chemical that, when introduced into the human body, impairs the central nervous system or the human audio, visual, or mental processes. The term does not include alcohol or controlled substances.[4] [—— is not a controlled substance.]

["Drug" means all medicinal substances and preparations, biological products, other than blood or blood components, all substances and preparations intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals; and all substances and preparations, other than food, intended to affect the structure or any function of the bodies of humans or other animals.[5]]

[The term "drug" also means any compound, substance, or derivative that, when introduced into the body, induces an effect similar to that of ——,[6] regardless of whether the substance is marketed for the purpose of human consumption.[7]]

["Chemical" means all medicinal or industrial substances, whether simple or compound, or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin.[8]]

"To know" requires only that the actor believes that the specified fact exists.

If a person ingests a substance and is not influenced by the substance, this element has not been proven. If, as a result of ingesting the substance, the person's ability or capacity to take a wild animal, is impaired, then the person is under the influence of that substance.

There is no set standard as to the quantity of a substance a person must ingest before being regarded as "under the influence." When a person is so affected by the substance that the person does not possess that clearness of intellect and control of (himself) (herself) as (he) (she) otherwise would have, that person is "under the influence."[9]

Third, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 97B.065, subd. 1.

The definition of "take" is from Minn. Stat. § 97A.015, subd. 47. *See State v. Schmid*, 859 N.W.2d 816 (Minn. 2015); *State v. O'Heron*, 83 N.W.2d 785 (Minn. 1957).

In *State v. Ritter*, 486 N.W.2d 832 (Minn. Ct. App. 1992), the Court of Appeals held that conduct preparatory to hunting did not constitute attempting to take wild animals within the meaning of a statute that prohibited taking wild animals while under the influence of intoxicants.

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[1] *See State v. Stark*, 363 N.W.2d 53 (Minn. 1985); *State v. Graham*, 222 N.W. 909 (Minn. 1929).

[2] *See State v. Stark*, 363 N.W.2d 53 (Minn. 1985); *State v. Graham*, 222 N.W. 909 (Minn. 1929).

[3] *See State v. Stark*, 363 N.W.2d 53 (Minn. 1985); *State v. Graham*, 222 N.W. 909 (Minn. 1929).

[4] Minn. Stat. § 169A.03, subd.

11a.

[5] Minn. Stat. § 151.01, subd. 5.

[6] Insert name of one or more substance(s) listed in Schedules I or II. *See* Minn. Stat. § 152.02, subds. 2, 3; Minn. Rules 6800.4210, .4220.

[7] Minn. Stat. § 151.01, subd. 5.

[8] Minn. Stat. § 151.01, subd. 8.

[9] *See State v. Stark*, 363 N.W.2d 53 (Minn. 1985); *State v. Graham*, 222 N.W. 909 (Minn. 1929).

CHAPTER 29

TRAFFIC

CRIMJIG 29.07

DRIVING WHILE UNDER THE INFLUENCE OF A COMBINATION OF ALCOHOL AND/OR A CONTROLLED SUBSTANCE AND/OR AN INTOXICATING SUBSTANCE—DEFINED *[Retitled]*

Replace current Jury Instruction with the following new Title, Text, and Comment:

Under Minnesota law, whoever (drives) (operates) (is in physical control of) a motor vehicle, when the person is under the influence of a combination of (alcohol) (and) (a controlled substance) (and) (an intoxicating substance, knowing or having reason to know the substance has the capacity to cause impairment), is guilty of a crime.

COMMENT

Minn. Stat. § 169A.20, subd. 1(4).

CRIMJIG 29.08

DRIVING WHILE UNDER THE INFLUENCE OF A COMBINATION OF ALCOHOL AND/OR A CONTROLLED SUBSTANCE AND/OR AN INTOXICATING SUBSTANCE— ELEMENTS *[Retitled]*

Replace current Jury Instruction with the following new Title, Text, Footnotes, and Comment:

The elements of this crime are:

First, the defendant (drove) (operated) (was in physical control of) a motor vehicle [upon the ice of any lake, stream, or river, including, but not limited to, the ice of any boundary water of this state].

["To drive" means to exercise physical control over the speed and direction of a motor vehicle while it is in motion.]

["To operate" means to perform any act that causes a motor vehicle to function or controls the functioning of a motor vehicle.][1]

[A person is in "physical control" of a motor vehicle when the person is present in a vehicle and is in a position to either direct the movement of the vehicle or keep the vehicle in restraint. It is not necessary for the engine to be running in order for a person to be in physical control of a motor vehicle.]

["Motor vehicle" means any vehicle that is self-propelled.] ["Motor vehicle" also includes any vehicle that is propelled by electric power obtained from overhead trolley wires.] ["Motor vehicle" also includes motorboats in operation and off-road recreational vehicles.] ["Motor vehicle" does not include any vehicle moved solely by human power.][2]

Second, at the time the defendant was (driving)

(operating) (in physical control of) a motor vehicle, the defendant was under the influence of a combination of (alcohol) (and) (a controlled substance) (and) (an intoxicating substance, which the defendant knew or had reason to know had the capacity to cause impairment).

[An "intoxicating substance" means a drug or chemical that, when introduced into the human body, impairs the central nervous system or the human audio, visual, or mental processes. The term does not include alcohol or controlled substances.[3] [—— is not a controlled substance.]]

["Drug" means all medicinal substances and preparations, biological products, other than blood or blood components, all substances and preparations intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals; and all substances and preparations, other than food, intended to affect the structure or any function of the bodies of humans or other animals.][4]

[The term "drug" also means any compound, substance, or derivative that, when introduced into the body, induces an effect similar to that of ——,[5] regardless of whether the substance is marketed for the purpose of human consumption.][6]

["Chemical" means all medicinal or industrial substances, whether simple or compound, or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin.][7]

"To know" requires only that the actor believes that the specified fact exists.

If a person ingests a substance and is not influenced by the substance, this element has not been proven. If, as a result of ingesting the substance, the person's ability or capacity to operate a motor vehicle is impaired, then the person is under the influence of that substance.

There is no set standard as to the quantity of a substance a person must ingest before being regarded as “under the influence.” When a person is so affected by the substance that the person does not possess that clearness of intellect and control of (himself) (herself) as (he) (she) otherwise would have, that person is “under the influence.”[8]

Third, the defendant’s act took place on (or about) ______ in ______ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

[Insert appropriate elements from CRIMJIG 29.20 Aggravating Factors if applicable. Note that under *State v. Davidson*, 351 N.W.2d 8 (Minn. 1984), the defendant may stipulate to any prior convictions and remove that element from the jury’s consideration.]

COMMENT

Minn. Stat. § 169A.20, subd. 1(4).

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[1] *State v. Henderson*, 907 N.W.2d 623 (Minn. 2018) (holding term “operating” in Minn. Stat. § 609.2113, subd. 1, refers to any act that causes a motor vehicle to function or controls the functioning of a motor vehicle, including the act of a passenger grabbing the steering wheel of a moving vehicle).

[2] *See* Minn. Stat. § 169A.03, subd. 15.

[3] Minn. Stat. § 169A.03, subd. 11a.

[4] Minn. Stat. § 151.01, subd. 5.

[5] Insert name of one or more substance(s) listed in Schedules I or II. *See* Minn. Stat. § 152.02, subds. 2, 3; Minn. Rules 6800.4210, .4220.

[6] Minn. Stat. § 151.01, subd. 5.

[7] Minn. Stat. § 151.01, subd. 8.

[8] *See State v. Stark*, 363 N.W.2d 53 (Minn. 1985); *State v. Graham*, 222 N.W. 909 (Minn. 1929).

CRIMJIG 29.13

DRIVING WHILE UNDER THE INFLUENCE OF AN INTOXICATING SUBSTANCE—DEFINED *[Retitled]*

Replace current Jury Instruction with the following new Title, text, and Comment:

Under Minnesota law, whoever (drives) (operates) (is in physical control of) a motor vehicle, when the person is under the influence of an intoxicating substance and knows or has reason to know the substance has the capacity to cause impairment, is guilty of a crime.

COMMENT

Minn. Stat. § 169A.20, subd. 1(3).

CRIMJIG 29.14

DRIVING WHILE UNDER THE INFLUENCE OF AN INTOXICATING SUBSTANCE— ELEMENTS *[Retitled]*

Replace current Jury Instruction with the following new Title, text, Footnotes, and Comment:

The elements of this crime are:

First, the defendant (drove) (operated) (was in physical control of) a motor vehicle [upon the ice of any lake, stream, or river, including, but not limited to, the ice of any boundary water of this state].

["To drive" means to exercise physical control over the speed and direction of a motor vehicle while it is in motion.]

["To operate" means to perform any act that causes a motor vehicle to function or controls the functioning of a motor vehicle.][1]

[A person is in "physical control" of a motor vehicle when the person is present in a vehicle and is in a position to either direct the movement of the vehicle or keep the vehicle in restraint. It is not necessary for the engine to be running in order for a person to be in physical control of a motor vehicle.]

["Motor vehicle" means any vehicle that is self-propelled.] ["Motor vehicle" also includes any vehicle that is propelled by electric power obtained from overhead trolley wires.] ["Motor vehicle" also includes motorboats in operation and off-road recreational vehicles.] ["Motor vehicle" does not include any vehicle moved solely by human power.][2]

Second, at the time the defendant was (driving) (operating) (in physical control of) a motor vehicle, the defendant was under the influence of an intoxicating substance.

An "intoxicating substance" means a drug or chemical that, when introduced into the human body, impairs the central nervous system or the human audio, visual, or mental processes. The term does not include alcohol or controlled substances.[3] [________ is not a controlled substance.]

["Drug" means all medicinal substances and preparations, biological products, other than blood or blood components, all substances and preparations intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals; and all substances and preparations, other than food, intended to affect the structure or any function of the bodies of humans or other animals.][4]

[The term "drug" also means any compound, substance, or derivative that, when introduced into the body, induces an effect similar to that of ________,[5] regardless of whether the substance is marketed for the purpose of human consumption.][6]

["Chemical" means all medicinal or industrial substances, whether simple or compound, or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin.][7]

If a person ingests a substance and is not influenced by the substance, this element has not been proven. If, as a result of ingesting the substance, the person's ability or capacity to operate a motor vehicle is impaired, then this element has been proven.

There is no set standard as to the quantity of a substance a person must ingest before being regarded as "under the influence." When a person is so affected by the substance that the person does not possess that clearness of intellect and control of (himself) (herself) as (he) (she) otherwise would have, that person is "under the influence."[8]

Third, the defendant knew or had reason to know that the substance had the capacity to cause impairment.

"To know" requires only that the actor believes that the specified fact exists.

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

[Insert appropriate elements from CRIMJIG 29.20—Aggravating Factors if applicable. Note that under *State v. Davidson*, 351 N.W.2d 8 (Minn. 1984), the defendant may stipulate to any prior convictions and remove that element from the jury's consideration.]

COMMENT

Minn. Stat. § 169A.20, subd. 1(3).

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[1] *State v. Henderson*, 907 N.W.2d 623 (Minn. 2018) (holding term "operating" in Minn. Stat. § 609.2113, subd. 1, refers to any act that causes a motor vehicle to function or controls the functioning of a motor vehicle, including the act of a passenger grabbing the steering wheel of a moving vehicle).

[2] *See* Minn. Stat. § 169A.03, subd. 15.

[3] Minn. Stat. § 169A.03, subd. 11a.

[4] Minn. Stat. § 151.01, subd. 5.

[5] Insert name of one or more substance(s) listed in Schedules I or II. *See* Minn. Stat. § 152.02, subds. 2, 3; Minn. Rules 6800.4210, .4220.

[6] Minn. Stat. § 151.01, subd. 5.

[7] Minn. Stat. § 151.01, subd. 8.

[8] *See State v. Stark*, 363 N.W.2d 53 (Minn. 1985); *State v. Graham*, 222 N.W. 909 (Minn. 1929).

CRIMJIG 29.15

DRIVING WITH AN ALCOHOL CONCENTRATION OF 0.08 OR MORE AS MEASURED WITHIN TWO HOURS OF THE TIME OF DRIVING—AFFIRMATIVE DEFENSE

Replace the current jury instruction with the following text:

The defendant is not guilty of violating this statute if you are convinced, by a preponderance of the evidence, that the defendant consumed a sufficient quantity of alcohol after the time of actual (driving) (operating) (physical control) of a motor vehicle and before the administration of the evidentiary test to cause the alcohol concentration to exceed (0.08) (0.16).

By the term "preponderance of the evidence," it is meant that all of the evidence produced must lead you to believe it is more likely that the claim is true than not true. Therefore, if you find it is more likely true than not true that the defendant's alcohol concentration exceeded (0.08) (0.16) as a result of alcohol consumed after the time of (driving) (operating) (being in physical control of) a motor vehicle, the defendant (is not guilty of this offense) (has not aggravated this offense). If you are not so convinced, the defense has not been proven, and if the State has proven each element of the offense beyond a reasonable doubt, the defendant is guilty.

CRIMJIG 29.20

DRIVING UNDER THE INFLUENCE—AGGRAVATING FACTORS

Replace the current instruction with the following text:

If you find the defendant guilty of ________, there (is) (are) (an) additional issue(s) you must determine, and (it) (they) will be put to you in the form of questions that will appear on the verdict form. The question(s) (is) (are):

> **[1] Did the defendant have (a) qualified prior impaired driving incident(s) within ten years immediately preceding the current offense? [A "qualified prior impaired driving incident" includes prior driving impaired convictions and prior impaired driving-related loss of license.][1] [If you answer "yes" to this question, you must also answer the following question: How many such offenses did the defendant have? If you have a reasonable doubt about how many such offenses the defendant had, you should choose the smaller number.]**
>
> **[2] Did the defendant have an alcohol concentration of 0.16 or more as measured at the time, or within two hours of the time, of the offense?**
>
> **[3] Was a child under 16 years of age in the vehicle at the time of the violation? Was the child more than 36 months younger than the defendant?**

You will answer (this) (each) question "yes" or "no." If you have a reasonable doubt as to the answer, you should answer the question(s) "no."

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[1] *See* M.S.A. § 169A.03, subds. 3; 20; 21; and 22, for more complete definitions, if necessary.

COMMENT

Add the following text as the second paragraph to the Comment:

In *State v. Fichtner*, 867 N.W.2d 242, (Minn. App. 2015) the Court of Appeals found that the aggravating factor of having a child under the age of 16 in the vehicle at the time of impaired driving may be used only once to make an aggravating factor. The statute makes no provision permitting the presence of additional children to represent separate aggravating factors.

CRIMJIG 29.21

REFUSAL TO SUBMIT TO TESTING—DEFINED

Replace current Jury Instruction with the following text and Comments:

Under Minnesota law, whoever refuses to submit to a chemical test

[1] of the person's breath

[2] of the person's blood or urine as required by a search warrant

under the implied consent law is guilty of a crime.

COMMENT

Minn. Stat. § 169A.20, subd. 2; Minn. Stat. § 169A.51; Minn. Stat. § 169A.52.

Minn. Stat. § 171.177; Minn. Stat. §§ 626.04–626.18.

CRIMJIG 29.22

REFUSAL TO SUBMIT TO TESTING—ELEMENTS

Replace the current Jury Instruction and Comments with the following text and Comments:

The elements of this crime are:

First, a peace officer had probable cause to believe that the defendant drove, operated, or was in physical control of a motor vehicle while under the influence of alcohol. In order to find that the officer had "probable cause," you must first look at the totality of the circumstances leading to the arrest, based upon the objective facts and circumstances testified to by the arresting officer, as well as the officer's training and experience. If you find those circumstances would lead a reasonable officer to have an honest and strong suspicion that the defendant was driving, operating, or in physical control of a motor vehicle while under the influence of alcohol, then the arresting officer had probable cause.

[1] Second, a peace officer placed the defendant under lawful arrest for driving while impaired. An arrest is "lawful" when an officer has reason to believe the defendant is in violation of the law and an officer can explain the reason.

[2] Second, the defendant was involved in a motor vehicle accident or collision resulting in (property damage) (personal injury to the defendant) (personal injury to another person) (death).

[3] Second, the defendant refused to take a screening test (also called a preliminary screening or preliminary breath test). This test is administered to aid the officer in deciding whether or not an arrest should be made.

[4] Second, the defendant took a screening test (also called a preliminary screening or preliminary breath test) and the results indicated an alcohol concentration of 0.08 or more.

Third, the defendant was given the breath test advisory by the peace officer.

[1] Fourth, the defendant was requested by a peace officer to submit to a chemical test of the defendant's breath.

[2] Fourth, the defendant was requested by a peace officer to submit to a chemical test of the defendant's (blood) (urine) as required by a search warrant.

Fifth, the defendant refused to submit to the test.

[A failure to complete the entire test is a refusal. (In the case of a breath test, the entire test must consist of one adequate breath sample analysis, one calibration standard analysis, and a second adequate breath sample analysis.)]

Sixth, the defendant's act took place on or about ________, in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

If you find the defendant guilty, you have (an) additional issue(s) to determine, and (it) (they) will be put to you in the form of (a) question(s) on the verdict form.[1] The question(s) (is) (are):

[1] Did the defendant have (a) qualified prior impaired driving incident(s) within ten years immediately preceding the current offense?[2]

"Qualified prior impaired driving incident" includes prior driving impaired convictions and prior impaired driving-related loss of license.[3]

[2] Was a child under 16 years of age in the vehicle at the time of the violation? Was the child more than 36 months younger than the defendant?

[For each question:] If you unanimously find the fact has been proven beyond a reasonable doubt, the answer is "yes." Otherwise, you must answer "no."

COMMENT

Minn. Stat. § 169A.20, subd. 2; Minn. Stat. § 169A.51; Minn. Stat. § 169A.52.

Minn. Stat. § 171.177; Minn. Stat. §§ 626.04–626.18.

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[1] Special verdict forms should include only the enhancing factors that correspond to the crime(s) charged in the complaint or permitted by the court as a lesser-included offense under Minn. Stat. § 609.04.

[2] This special interrogatory should be used only if the defendant is charged with an offense enhanced by prior conviction. The defendant is entitled to stipulate to the existence of a prior conviction. *State v. Davidson*, 351 N.W.2d 8, 11 (Minn. 1984). Such a stipulation constitutes a waiver of jury trial on this element, and the defendant's waiver must be made personally and on the record. If the defendant has stipulated to the prior conviction, that information should not be presented to the jury, and the special interrogatory should not be used.

[3] Minn. Stat. § 169A.03, subds. 3, 20, 21, and 22.

CRIMJIG 29.25

RECKLESS DRIVING—DEFINED

COMMENT

Replace the current first paragraph of the Comment with the following text:

M.S.A. § 169.13, subd. 1(a) and subd. 3.

CRIMJIG 29.26

RECKLESS DRIVING—ELEMENTS

COMMENT

Delete the first paragraph of the Comment.

CRIMJIG 29.39

FAILURE TO STOP AND GIVE INFORMATION—ATTENDED VEHICLE—NO PERSONAL INJURY—DEFINED

Replace Current Instruction and Comment with the following text:

Under Minnesota law, whoever is the driver of any vehicle involved in a collision with a vehicle driven or attended by any person and fails to immediately stop such vehicle at the scene of an accident, or as close thereto as possible, fails to forthwith return to the scene, or fails to remain at the scene of the accident until fulfilling the statutory requirements as to the giving of information, is guilty of a crime.

COMMENT

Minn. Stat. § 169.09, subd. 2.

CRIMJIG 29.40

FAILURE TO STOP AND GIVE INFORMATION—ATTENDED VEHICLE—NO PERSONAL INJURY—ELEMENTS

Replace Current Instruction and Comment with the following text:

The elements of this crime are:

First, the defendant was the driver of a vehicle involved in a collision with a vehicle driven or attended by another person.

> **"Attended" means that there was a person in, upon, or in immediate proximity to the vehicle.**

[1] Second, the defendant knew or had reason to know the collision resulted in damage to the attended vehicle.

> **"To know" requires only that the defendant believes that the specified fact exists.[1]**

Third, the defendant failed to immediately stop at the scene of the collision, or as close to the scene as possible, (and return to) and remain at the scene until the defendant had provided (his) (her) name, address, date of birth, and vehicle registration number [and exhibited (his) (her) driver's license or permit].

[2] Second, the defendant failed to stop the vehicle at the scene of the collision, or as close to the scene as possible, and reasonably investigate what was struck.

(Third) (Fourth), the defendant's act took place on (or about) ____________________, in ____________________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 169.09, subd. 2.

Minn. Stat. § 169.09 applies to the operation of snowmobiles anywhere in the state or on the ice of any boundary water of the state. Minn. Stat. § 84.87, subd. 1(f).

Minn. Stat. § 169.09, subd. 15, provides that it is an affirmative defense to a prosecution under this subdivision if the driver left the scene of the accident to take a person suffering immediately demonstrable bodily injury in the accident to receive emergency medical care. The driver must also have given notice as required by Minn. Stat. § 169.09, subd. 6, to a law enforcement agency as soon as reasonably feasible after the emergency care has been undertaken.

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[1] Minn. Stat. § 609.02, subd. 9 (2).

CRIMJIG 29.43

FAILURE TO STOP AND GIVE INFORMATION—UNATTENDED VEHICLE—DEFINED

Replace current Jury Instruction with the following text:

Under Minnesota law, whoever is the driver of any vehicle involved in a collision that results in damage to any unattended vehicle and fails to stop immediately, locate and notify the driver or owner of the vehicle of the name and address of the driver and owner of the vehicle striking the unattended vehicle, report the same to a peace officer, or leave in a conspicuous place in or secured to the unattended vehicle a written notice giving the name and address of the driver and owner of the vehicle doing the striking, is guilty of a crime.

CRIMJIG 29.44

FAILURE TO STOP AND GIVE INFORMATION—UNATTENDED VEHICLE—ELEMENTS

Replace current Jury Instruction with the following text:

The elements of failing to stop and give information after a collision involving an unattended vehicle are:

First, the defendant was the driver of a vehicle that collided with or caused a collision with an unattended vehicle. ["Unattended" means the vehicle was not occupied, and there was no person in the immediate vicinity looking after the vehicle.]

[1] Second, the defendant failed to stop the vehicle at the scene of the collision, or as close to the scene as possible and reasonably investigate what was struck.

[2] Second, the defendant knew or had reason to know the collision resulted in damage to the unattended vehicle.

Third, the defendant failed to stop immediately and provide (his) (her) name and address and the name and address of the owner of the vehicle (he) (she) was driving in any of the following ways:

[a] by locating and notifying the driver or owner of the unattended vehicle.

[b] by reporting this information to a police officer.

[c] by leaving written notice containing this information in a conspicuous place in or secured to the unattended vehicle.

[Third] [Fourth], the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been

proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CRIMJIG 29.57

FAILURE TO YIELD—PEDESTRIANS—ABSENCE OF SIGNALS—DEFINED

Replace current Jury Instruction with the following text and Comment:

Under Minnesota law, the driver of a vehicle who fails to stop to yield the right-of-way to a pedestrian crossing the roadway within a marked crosswalk or at an intersection with no marked crosswalk where traffic-control signals are not in place or in operation, is guilty of a crime.

COMMENT

Minn. Stat. § 169.21, subd. 2.

CRIMJIG 29.58

FAILURE TO YIELD—PEDESTRIANS—ABSENCE OF SIGNALS—ELEMENTS

Replace current Jury Instruction with the following text and Footnote:

The elements of failure to yield to a pedestrian are:

First, the defendant drove a vehicle. "Vehicle" means a device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices used exclusively upon stationary rails or tracks.

Second, the defendant approached a pedestrian who was crossing the roadway (within a marked crosswalk) (within any crosswalk at an intersection) where traffic-control signals were not in (place) (operation).

Third, the defendant failed to stop to yield the right-of way. [No pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible for the driver to yield. The State must prove beyond a reasonable doubt that it was not impossible for the defendant to yield.][1]

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

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[1] The bracketed language should only be used if the defendant has met his or her burden of production. *See* Minn. Stat. § 169.21, subd. 2(a); *State v. Kramer*, 668 N.W.2d 32 (Minn. App. 2003); *State v. Auchampach*, 540 N.W.2d 808 (Minn. 1995).

CRIMJIG 29.63

OPERATING AIRCRAFT WHILE UNDER THE INFLUENCE OF A COMBINATION OF ALCOHOL AND/OR A CONTROLLED SUBSTANCE AND/OR AN INTOXICATING SUBSTANCE—DEFINED *[Retitled]*

Replace current Jury Instruction with the following new Title, Text, and Comment:

Under Minnesota law, whoever operates or attempts to operate an aircraft on or over land or water, or over any boundary water, when the person is under the influence of a combination of (alcohol) (and) (a controlled substance) (and) (an intoxicating substance, knowing or having reason to know the substance has the capacity to cause impairment), is guilty of a crime.

COMMENT

Minn. Stat. § 360.0752, subd. 2(a)(3).

CRIMJIG 29.64

OPERATING AIRCRAFT WHILE UNDER THE INFLUENCE OF A COMBINATION OF ALCOHOL AND/OR A CONTROLLED SUBSTANCE AND/OR A HAZARDOUS SUBSTANCE—ELEMENTS *[Retitled]*

Replace current Jury Instruction with the following new Title, Text, Footnotes, and Comment:

The elements of this crime are:

First, the defendant (operated) (attempted to operate) an aircraft.

An "aircraft" is any contrivance used or designed for navigation of or flight in air [but excludes parachutes].

To "operate" includes the acts of all crew members with responsibility to operate the aircraft.

Second, at the time the defendant was (operating) (attempting to operate) an aircraft, the defendant was under the influence of a combination of (alcohol) (and) (a controlled substance) (and) (an intoxicating substance.)

[An "intoxicating substance" means a drug or chemical that, when introduced into the human body, impairs the central nervous system or the human audio, visual, or mental processes. The term does not include alcohol or controlled substances.[1] [________ is not a controlled substance.]]

["Drug" means all medicinal substances and preparations, biological products, other than blood or blood components, all substances and preparations intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals; and all substances and preparations, other than food, intended to affect the structure or any function of the bodies of humans or other animals.][2]

[The term "drug" also means any compound, sub-

stance, or derivative that, when introduced into the body, induces an effect similar to that of ________,[3] regardless of whether the substance is marketed for the purpose of human consumption.][4]

["Chemical" means all medicinal or industrial substances, whether simple or compound, or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin.][5]

If a person ingests a substance and is not influenced by the substance, this element has not been proven. If, as a result of ingesting the substance, the person's ability or capacity to operate an aircraft is impaired, then this element has been proven.

There is no set standard as to the quantity of a substance a person must ingest before being regarded as "under the influence." When a person is so affected by the substance that the person does not possess that clearness of intellect and control of (himself) (herself) as (he) (she) otherwise would have, that person is "under the influence."[6]

[Third, the defendant knew or had reason to know the intoxicating substance had the capacity to cause impairment.]

"To know" requires only that the actor believes that the specified fact exists.

[Third] [Fourth], the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 360.0752, subd. 2(a)(3).

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[1] Minn. Stat. § 169A.03, subd. 11a.

[2] Minn. Stat. § 151.01, subd. 5.

[3] Insert name of one or more substance(s) listed in Schedules I or II. *See* Minn. Stat. § 152.02, subds. 2, 3; Minn. Rules 6800.4210, .4220.

[4] Minn. Stat. § 151.01, subd. 5.

[5] Minn. Stat. § 151.01, subd. 8.

[6] *See State v. Stark*, 363 N.W.2d 53 (Minn. 1985); *State v. Graham*, 222 N.W. 909 (Minn. 1929).

CRIMJIG 29.70

OPERATING AIRCRAFT WHILE UNDER THE INFLUENCE OF AN INTOXICATING SUBSTANCE—DEFINED *[Retitled]*

Replace current Jury Instruction with the following new Title, Text, and Comment:

Under Minnesota law, whoever operates or attempts to operate an aircraft on or over land or water, or over any boundary water, when the person is under the influence of an intoxicating substance, knowing or having reason to know the substance has the capacity to cause impairment, is guilty of a crime.

COMMENT

Minn. Stat. § 360.0752, subd. 2(a)(6).

CRIMJIG 29.71

OPERATING AIRCRAFT WHILE UNDER THE INFLUENCE OF AN INTOXICATING SUBSTANCE—ELEMENTS *[Retitled]*

Replace current Jury Instruction with the following new Title, Text, Footnotes, and Comment:

The elements of this crime are:

First, the defendant (operated) (attempted to operate) an aircraft.

An "aircraft" is any contrivance used or designed for navigation of or flight in air [but excludes parachutes].

To "operate" includes the acts of all crew members with responsibility to operate the aircraft.

Second, at the time the defendant was (operating) (attempting to operate) an aircraft, the defendant was under the influence of an intoxicating substance.

An "intoxicating substance" means a drug or chemical that, when introduced into the human body, impairs the central nervous system or the human audio, visual, or mental processes. The term does not include alcohol or controlled substances.[1] [________ is not a controlled substance.]

["Drug" means all medicinal substances and preparations, biological products, other than blood or blood components, all substances and preparations intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals; and all substances and preparations, other than food, intended to affect the structure or any function of the bodies of humans or other animals.][2]

[The term "drug" also means any compound, substance, or derivative that, when introduced into the body,

induces an effect similar to that of ________,[3] regardless of whether the substance is marketed for the purpose of human consumption.][4]

["Chemical" means all medicinal or industrial substances, whether simple or compound, or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin.][5]

If a person ingests a substance and is not influenced by the substance, this element has not been proven. If, as a result of ingesting the substance, the person's ability or capacity to operate an aircraft is impaired, then the person is under the influence of that substance.

There is no set standard as to the quantity of a substance a person must ingest before being regarded as "under the influence." When a person is so affected by the substance that the person does not possess that clearness of intellect and control of (himself) (herself) as (he) (she) otherwise would have, that person is "under the influence."[6]

Third, the defendant knew or had reason to know the intoxicating substance had the capacity to cause impairment.

"To know" requires only that the actor believes that the specified fact exists.

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 360.0752, subd. 2(a)(6).

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[1] Minn. Stat. § 169A.03, subd. 11a.

[2] Minn. Stat. § 151.01, subd. 5.

[3] Insert name of one or more substance(s) listed in Schedules I or II. *See* Minn. Stat. § 152.02, subds. 2, 3; Minn. Rules 6800.4210, .4220.

[4] Minn. Stat. § 151.01, subd. 5.

[5] Minn. Stat. § 151.01, subd. 8.

[6] *See State v. Stark*, 363 N.W.2d 53 (Minn. 1985); *State v. Graham*, 222 N.W. 909 (Minn. 1929).

CRIMJIG 29.84

OPERATING A SNOWMOBILE/ALL-TERRAIN VEHICLE WHILE UNDER THE INFLUENCE OF A COMBINATION OF ALCOHOL AND/OR A CONTROLLED SUBSTANCE AND/OR AN INTOXICATING SUBSTANCE—DEFINED *[Retitled]*

Replace current Jury Instruction with the following new Title, text, and Comment:

Under Minnesota law, whoever ((operates) (is in physical control of)) ((a snowmobile) (an all-terrain vehicle)) within this state or on the ice of any boundary water, when the person is under the influence of a combination of (alcohol) (and) (a controlled substance) (and) (an intoxicating substance, knowing or having reason to know that the substance has the capacity to cause impairment), is guilty of a crime.

COMMENT

Minn. Stat. 169A.20, subd. 1b(4); Minn. Stat. § 84.91, subd. 1(c).

CRIMJIG 29.85

OPERATING A SNOWMOBILE/ALL-TERRAIN VEHICLE WHILE UNDER THE INFLUENCE OF A COMBINATION OF ALCOHOL AND/OR A CONTROLLED SUBSTANCE AND/OR AN INTOXICATING SUBSTANCE— ELEMENTS *[Retitled]*

Replace current Jury Instruction with the following new Title, text, Footnotes, and Comment:

The elements of this crime are:

First, the defendant ((operated) (was in physical control of)) ((a snowmobile) (an all-terrain vehicle)).

["To operate" means to perform any act that causes a vehicle to function or controls the functioning of a vehicle.][1]

[A person is in "physical control" of a vehicle when the person is present in a vehicle and is in a position to either direct the movement of the vehicle or keep the vehicle in restraint. It is not necessary for the engine to be running in order for a person to be in physical control of a vehicle.]

Second, at the time the defendant was ((operating) (in physical control of)) ((a snowmobile) (an all-terrain vehicle)), the defendant was under the influence of a combination of (alcohol) (and) (a controlled substance) (and) (an intoxicating substance).

[An "intoxicating substance" means a drug or chemical that, when introduced into the human body, impairs the central nervous system or the human audio, visual, or mental processes. The term does not include alcohol or controlled substances.[2] [________ is not a controlled substance.]]

["Drug" means all medicinal substances and prepara-

tions, biological products, other than blood or blood components, all substances and preparations intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals; and all substances and preparations, other than food, intended to affect the structure or any function of the bodies of humans or other animals.][3]

[The term "drug" also means any compound, substance, or derivative that, when introduced into the body, induces an effect similar to that of ________,[4] regardless of whether the substance is marketed for the purpose of human consumption.][5]

["Chemical" means all medicinal or industrial substances, whether simple or compound, or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin.][6]

If a person ingests a substance and is not influenced by the substance, this element has not been proven. If, as a result of ingesting the substance, the person's ability or capacity to (operate) (be in physical control of) (a snowmobile) (an all-terrain vehicle) is impaired, then the person is under the influence of that substance.

There is no set standard as to the quantity of a substance a person must ingest before being regarded as "under the influence." When a person is so affected by the substance that the person does not possess that clearness of intellect and control of (himself) (herself) as (he) (she) otherwise would have, that person is "under the influence."[7]

[Third, the defendant knew or had reason to know the intoxicating substance had the capacity to cause impairment.]

"To know" requires only that the actor believes that the specified fact exists.

[Third] [Fourth], the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

[Insert appropriate elements from CRIMJIG 29.20 Aggravating Factors if applicable. Note that under *State v. Davidson*, 351 N.W.2d 8 (Minn. 1984), the defendant may stipulate to any prior convictions and remove that element from the jury's consideration.]

COMMENT

Minn. Stat. 169A.20, subd. 1b(4); Minn. Stat. § 84.91, subd. 1(c).

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[1] *State v. Henderson*, 907 N.W.2d 623 (Minn. 2018) (holding term "operating" in Minn. Stat. § 609.2113, subd. 1, refers to any act that causes a motor vehicle to function or controls the functioning of a motor vehicle, including the act of a passenger grabbing the steering wheel of a moving vehicle).

[2] Minn. Stat. § 169A.03, subd. 11a.

[3] Minn. Stat. § 151.01, subd. 5.

[4] Insert name of one or more substance(s) listed in Schedules I or II. *See* Minn. Stat. § 152.02, subds. 2, 3; Minn. Rules 6800.4210, .4220.

[5] Minn. Stat. § 151.01, subd. 5.

[6] Minn. Stat. § 151.01, subd. 8.

[7] *See State v. Stark*, 363 N.W.2d 53 (Minn. 1985); *State v. Graham*, 222 N.W. 909 (Minn. 1929).

CRIMJIG 29.90

OPERATING A SNOWMOBILE/ALL-TERRAIN VEHICLE WHILE UNDER THE INFLUENCE OF AN INTOXICATING SUBSTANCE—DEFINED *[Retitled]*

Replace current Jury Instruction with the following new Title, Text, and Comment:

Under Minnesota law, whoever ((operates) (is in physical control of)) ((a snowmobile) (an all-terrain vehicle)) within this state or on the ice of any boundary water, when the person is under the influence of an intoxicating substance, knowing or having reason to know the substance has the capacity to cause impairment, is guilty of a crime.

COMMENT

Minn. Stat. § 169A.20, subd. 1b(3); Minn. Stat. § 84.91, subd. 1(3).

CRIMJIG 29.91

OPERATING A SNOWMOBILE/ALL-TERRAIN VEHICLE WHILE UNDER THE INFLUENCE OF AN INTOXICATING SUBSTANCE— ELEMENTS *[Retitled]*

Replace current Jury Instruction with the following new Title, Text, Footnotes, and Comment:

The elements of this crime are:

First, the defendant ((operated) (was in physical control of)) ((a snowmobile) (an all-terrain vehicle)).

["To operate" means to perform any act that causes a vehicle to function or controls the functioning of a vehicle.][1]

[A person is in "physical control" of a vehicle when the person is present in a vehicle and is in a position to either direct the movement of the vehicle or keep the vehicle in restraint. It is not necessary for the engine to be running in order for a person to be in physical control of a vehicle.]

Second, at the time the defendant was ((operating) (in physical control of)) ((a snowmobile) (an all-terrain vehicle)), the defendant was under the influence of a an intoxicating substance.

An "intoxicating substance" means a drug or chemical that, when introduced into the human body, impairs the central nervous system or the human audio, visual, or mental processes. The term does not include alcohol or controlled substances.[2] [________ is not a controlled substance.]

["Drug" means all medicinal substances and preparations, biological products, other than blood or blood components, all substances and preparations intended for use in the diagnosis, cure, mitigation, treatment, or

prevention of disease in humans or other animals; and all substances and preparations, other than food, intended to affect the structure or any function of the bodies of humans or other animals.][3]

[The term "drug" also means any compound, substance, or derivative that, when introduced into the body, induces an effect similar to that of ________,[4] regardless of whether the substance is marketed for the purpose of human consumption.][5]

["Chemical" means all medicinal or industrial substances, whether simple or compound, or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin.][6]

If a person ingests a substance and is not influenced by the substance, this element has not been proven. If, as a result of ingesting the substance, the person's ability or capacity to (operate) (be in physical control of) (a snowmobile) (an all-terrain vehicle) is impaired, then the person is under the influence of that substance.

There is no set standard as to the quantity of a substance a person must ingest before being regarded as "under the influence." When a person is so affected by the substance that the person does not possess that clearness of intellect and control of (himself) (herself) as (he) (she) otherwise would have, that person is "under the influence."[7]

Third, the defendant knew or had reason to know the intoxicating substance had the capacity to cause impairment.

"To know" requires only that the actor believes that the specified fact exists.

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been

proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

[Insert appropriate elements from CRIMJIG 29.20 Aggravating Factors if applicable. Note that under *State v. Davidson*, 351 N.W.2d 8 (Minn. 1984), the defendant may stipulate to any prior convictions and remove that element from the jury's consideration.]

COMMENT

Minn. Stat. § 169A.20, subd. 1b(3); Minn. Stat. § 84.91, subd. 1(3).

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[1] *State v. Henderson*, 907 N.W.2d 623 (Minn. 2018) (holding term "operating" in Minn. Stat. § 609.2113, subd. 1, refers to any act that causes a motor vehicle to function or controls the functioning of a motor vehicle, including the act of a passenger grabbing the steering wheel of a moving vehicle).

[2] Minn. Stat. § 169A.03, subd. 11a.

[3] Minn. Stat. § 151.01, subd. 5.

[4] Insert name of one or more substance(s) listed in Schedules I or II. *See* Minn. Stat. § 152.02, subds. 2, 3; Minn. Rules 6800.4210, .4220.

[5] Minn. Stat. § 151.01, subd. 5.

[6] Minn. Stat. § 151.01, subd. 8.

[7] *See State v. Stark*, 363 N.W.2d 53 (Minn. 1985); *State v. Graham*, 222 N.W. 909 (Minn. 1929).

CRIMJIG 29.96

OPERATING A MOTORBOAT WHILE UNDER THE INFLUENCE OF A COMBINATION OF ALCOHOL AND/OR A CONTROLLED SUBSTANCE AND/OR AN INTOXICATING SUBSTANCE—DEFINED *[Retitled]*

Replace current Jury Instruction with the following new Title, Text, and Comment:

Under Minnesota law, whoever (operates) (is in physical control of) a motorboat in operation on the water, when the person is under the influence of a combination of (alcohol) (and) (a controlled substance) (and) (an intoxicating substance, knowing or having reason to know the substance has the capacity to cause impairment,), is guilty of a crime.

COMMENT

Minn. Stat. § 169A.20, subd. 1a(4); Minn. Stat. § 86B.331, subd. 1(c).

CRIMJIG 29.97

OPERATING A MOTORBOAT WHILE UNDER THE INFLUENCE OF A COMBINATION OF ALCOHOL AND/OR A CONTROLLED SUBSTANCE AND/OR AN INTOXICATING SUBSTANCE—ELEMENTS *[Retitled]*

Replace current Jury Instruction with the following new Title, Text, Footnotes, and Comment:

The elements of this crime are:

First, the defendant (operated) (was in physical control of) a motorboat in operation on the water.

[A person "operates" a motorboat by navigating or otherwise using the motorboat.]

[A person is in "physical control" of a motorboat when the person is present in a motorboat and is in a position to either direct the operation of the motorboat or keep the motorboat in restraint.]

[A "motorboat" is a watercraft propelled in any manner by machinery, including a watercraft temporarily equipped with a detachable motor.] [A motorboat is not in operation if it is anchored, beached, or securely fastened to a dock or other permanent mooring.]

Second, at the time the defendant was (operating) (in physical control of) a motorboat, the defendant was under the influence of a combination of (alcohol) (and) (a controlled substance) (and) (an intoxicating substance).

[An "intoxicating substance" means a drug or chemical that, when introduced into the human body, impairs the central nervous system or the human audio, visual, or mental processes. The term does not include alcohol or controlled substances.[1] [________ is not a controlled substance.]]

["Drug" means all medicinal substances and prepara-

tions, biological products, other than blood or blood components, all substances and preparations intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals; and all substances and preparations, other than food, intended to affect the structure or any function of the bodies of humans or other animals.][2]

[The term "drug" also means any compound, substance, or derivative that, when introduced into the body, induces an effect similar to that of ________,[3] regardless of whether the substance is marketed for the purpose of human consumption.][4]

["Chemical" means all medicinal or industrial substances, whether simple or compound, or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin.][5]

If a person ingests a substance and is not influenced by the substance, this element has not been proven. If, as a result of ingesting the substance, the person's ability or capacity to (operate) (be in physical control of) a motorboat is impaired, then the person is under the influence of that substance.

There is no set standard as to the quantity of a substance a person must ingest before being regarded as "under the influence." When a person is so affected by the substance that the person does not possess that clearness of intellect and control of (himself) (herself) as (he) (she) otherwise would have, that person is "under the influence."[6]

[Third, the defendant knew or had reason to know the intoxicating substance had the capacity to cause impairment.]

"To know" requires only that the actor believes that the specified fact exists.

[Third] [Fourth], the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

[Insert appropriate elements from CRIMJIG 29.20 Aggravating Factors if applicable. Note that under *State v. Davidson*, 351 N.W.2d 8 (Minn. 1984), the defendant may stipulate to any prior convictions and remove that element from the jury's consideration.]

COMMENT

Minn. Stat. § 169A.20, subd. 1a(4); Minn. Stat. § 86B.331, subd. 1(c).

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[1] Minn. Stat. § 169A.03, subd. 11a.

[2] Minn. Stat. § 151.01, subd. 5.

[3] Insert name of one or more substance(s) listed in Schedules I or II. *See* Minn. Stat. § 152.02, subds. 2, 3; Minn. Rules 6800.4210, .4220.

[4] Minn. Stat. § 151.01, subd. 5.

[5] Minn. Stat. § 151.01, subd. 8.

[6] *See State v. Stark*, 363 N.W.2d 53 (Minn. 1985); *State v. Graham*, 222 N.W. 909 (Minn. 1929).

CRIMJIG 29.102

OPERATING A MOTORBOAT WHILE UNDER THE INFLUENCE OF AN INTOXICATING SUBSTANCE—DEFINED *[Retitled]*

Replace current Jury Instruction with the following new Title, Text, and Comment:

Under Minnesota law, whoever (operates) (is in physical control of) a motorboat in operation on the water, when the person is under the influence of an intoxicating substance, knowing or having reason to know the substance has the capacity to cause impairment, is guilty of a crime.

COMMENT

Minn. Stat. § 169A.20, subd. 1a(3); Minn. Stat. § 86B.331, subd. 1(c).

CRIMJIG 29.103

OPERATING A MOTORBOAT WHILE UNDER THE INFLUENCE OF AN INTOXICATING SUBSTANCE—ELEMENTS *[Retitled]*

Replace current Jury Instruction with the following new Title, Text, Footnotes, and Comment:

The elements of this crime are:

First, the defendant (operated) (was in physical control of) a motorboat in operation on the water.

[A person "operates" a motorboat by navigating or otherwise using the motorboat.]

[A person is in "physical control" of a motorboat when the person is present in a motorboat and is in a position to either direct the operation of the motorboat or keep the motorboat in restraint.]

[A "motorboat" is a watercraft propelled in any manner by machinery, including a watercraft temporarily equipped with a detachable motor.]

[A motorboat is not in operation if it is anchored, beached, or securely fastened to a dock or other permanent mooring.]

Second, at the time the defendant was (operating) (in physical control of) a motorboat, the defendant was under the influence of an intoxicating substance.

An "intoxicating substance" means a drug or chemical that, when introduced into the human body, impairs the central nervous system or the human audio, visual, or mental processes. The term does not include alcohol or controlled substances.[1] [________ is not a controlled substance.]

["Drug" means all medicinal substances and prepara-

tions, biological products, other than blood or blood components, all substances and preparations intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals; and all substances and preparations, other than food, intended to affect the structure or any function of the bodies of humans or other animals.][2]

[The term "drug" also means any compound, substance, or derivative that, when introduced into the body, induces an effect similar to that of ________,[3] regardless of whether the substance is marketed for the purpose of human consumption.][4]

["Chemical" means all medicinal or industrial substances, whether simple or compound, or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin.][5]

If a person ingests a substance and is not influenced by the substance, this element has not been proven. If, as a result of ingesting the substance, the person's ability or capacity to (operate) (be in physical control of) a motorboat is impaired, then the person is under the influence of that substance.

There is no set standard as to the quantity of a substance a person must ingest before being regarded as "under the influence." When a person is so affected by the substance that the person does not possess that clearness of intellect and control of (himself) (herself) as (he) (she) otherwise would have, that person is "under the influence."[6]

Third, the defendant knew or had reason to know the intoxicating substance had the capacity to cause impairment.

"To know" requires only that the actor believes that the specified fact exists.

Fourth, the defendant's act took place on (or about) ______ in ______ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

[Insert appropriate elements from CRIMJIG 29.20 Aggravating Factors if applicable. Note that under *State v. Davidson*, 351 N.W.2d 8 (Minn. 1984), the defendant may stipulate to any prior convictions and remove that element from the jury's consideration.]

COMMENT

Minn. Stat. § 169A.20, subd. 1a(3); Minn. Stat. § 86B.331, subd. 1(c).

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[1] Minn. Stat. § 169A.03, subd. 11a.

[2] Minn. Stat. § 151.01, subd. 5.

[3] Insert name of one or more substance(s) listed in Schedules I or II. *See* Minn. Stat. § 152.02, subds. 2, 3; Minn. Rules 6800.4210, .4220.

[4] Minn. Stat. § 151.01, subd. 5.

[5] Minn. Stat. § 151.01, subd. 8.

[6] *See State v. Stark*, 363 N.W.2d 53 (Minn. 1985); *State v. Graham*, 222 N.W. 909 (Minn. 1929).

CRIMJIG 29.110

OPERATING AN OFF-HIGHWAY MOTORCYCLE/ OFF-ROAD VEHICLE WHILE UNDER THE INFLUENCE OF A COMBINATION OF ALCOHOL AND/OR A CONTROLLED SUBSTANCE AND/OR AN INTOXICATING SUBSTANCE—DEFINED *[Retitled]*

Replace current Jury Instruction with the following new Title, Text, and Comment:

Under Minnesota law, whoever ((operates) (is in physical control of)) ((an off-highway motorcycle) (off-road vehicle)) within this state or on the ice of any boundary water, when the person is under the influence of a combination of (alcohol) (and) (a controlled substance) (and) (an intoxicating substance, knowing or having reason to know the substance has the capacity to cause impairment), is guilty of a crime.

COMMENT

Minn. Stat. § 169A.20, subd. 1c(4).

CRIMJIG 29.111

OPERATING AN OFF-HIGHWAY MOTORCYCLE/ OFF-ROAD VEHICLE WHILE UNDER THE INFLUENCE OF A COMBINATION OF ALCOHOL AND/OR A CONTROLLED SUBSTANCE AND/OR AN INTOXICATING SUBSTANCE— ELEMENTS *[Retitled]*

Replace current Jury Instruction with the following new Title, Text, Footnotes, and Comment:

The elements of this crime are:

First, the defendant ((operated) (was in physical control of)) ((an off-highway motorcycle) (off-road vehicle)).

["Off-highway motorcycle" means a motorized, off-highway vehicle traveling on two wheels and having a seat or saddle designed to be straddled by the operator and handlebars for steering control, including a vehicle that is registered under chapter 168 for highway use if it is also used for off-highway operation on trails or unimproved terrain.][1] ["Off-road vehicle" means a motor-driven recreational vehicle capable of cross-country travel on natural terrain without benefit of a road or trail. Off-road vehicle does not include a snowmobile; an all-terrain vehicle; a motorcycle; a watercraft; a farm vehicle being used for farming; a vehicle used for military, fire, emergency, or law enforcement purposes; a construction or logging vehicle used in the performance of its common function; a motor vehicle owned by or operated under contract with a utility, whether publicly or privately owned, when used for work on utilities; a commercial vehicle being used for its intended purpose; snow-grooming equipment when used for its intended purpose; or an aircraft.][2]

["To operate" means to perform any act that causes a vehicle to function or controls the functioning of a vehicle.][3]

[A person is in "physical control" of a vehicle when the person is present in a vehicle and is in a position to either direct the movement of the vehicle or keep the vehicle in restraint. It is not necessary for the engine to be running in order for a person to be in physical control of a vehicle.]

Second, at the time the defendant was [(operating) (in physical control of)] [(an off-highway motorcycle) (off-road vehicle)], the defendant was under the influence of a combination of (alcohol) (and) (a controlled substance) (and) (an intoxicating substance).

[An "intoxicating substance" means a drug or chemical that, when introduced into the human body, impairs the central nervous system or the human audio, visual, or mental processes. The term does not include alcohol or controlled substances.[4] [________ is not a controlled substance.]]

["Drug" means all medicinal substances and preparations, biological products, other than blood or blood components, all substances and preparations intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals; and all substances and preparations, other than food, intended to affect the structure or any function of the bodies of humans or other animals.][5]

[The term "drug" also means any compound, substance, or derivative that, when introduced into the body, induces an effect similar to that of ________,[6] regardless of whether the substance is marketed for the purpose of human consumption.][7]

["Chemical" means all medicinal or industrial substances, whether simple or compound, or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin.][8]

If a person ingests a substance and is not influenced by the substance, this element has not been proven. If, as

a result of ingesting the substance, the person's ability or capacity to (operate) (be in physical control of) (an off-highway motorcycle) (off-road vehicle) is impaired, then the person is under the influence of that substance.

There is no set standard as to the quantity of a substance a person must ingest before being regarded as "under the influence." When a person is so affected by the substance that the person does not possess that clearness of intellect and control of (himself) (herself) as (he) (she) otherwise would have, that person is "under the influence."[9]

[Third, the defendant knew or had reason to know the intoxicating substance had the capacity to cause impairment.]

"To know" requires only that the actor believes that the specified fact exists.

[Third] [Fourth], the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

[Insert appropriate elements from CRIMJIG 29.20 Aggravating Factors if applicable. Note that under *State v. Davidson*, 351 N.W.2d 8 (Minn. 1984), the defendant may stipulate to any prior convictions and remove that element from the jury's consideration.]

COMMENT

Minn. Stat. § 169A.20, subd. 1c(4).

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[1] Minn. Stat. § 84.787, subd. 7.

[2] Minn. Stat. § 84.797, subd. 7.

[3] *State v. Henderson*, 907 N.W.2d 623 (Minn. 2018) (holding term "operating" in Minn. Stat. § 609.2113, subd. 1, refers to any act that causes a mo-

tor vehicle to function or controls the functioning of a motor vehicle, including the act of a passenger grabbing the steering wheel of a moving vehicle).

[4] Minn. Stat. § 169A.03, subd. 11a.

[5] Minn. Stat. § 151.01, subd. 5.

[6] Insert name of one or more substance(s) listed in Schedules I or II. *See* Minn. Stat. § 152.02, subds. 2, 3; Minn. Rules 6800.4210, .4220.

[7] Minn. Stat. § 151.01, subd. 5.

[8] Minn. Stat. § 151.01, subd. 8.

[9] *See State v. Stark*, 363 N.W.2d 53 (Minn. 1985); *State v. Graham*, 222 N.W. 909 (Minn. 1929).

CRIMJIG 29.116

OPERATING AN OFF-HIGHWAY MOTORCYCLE/ OFF-ROAD VEHICLE WHILE UNDER THE INFLUENCE OF AN INTOXICATING SUBSTANCE— DEFINED *[Retitled]*

Replace current Jury Instruction with the following new Title, Text, and Comment:

Under Minnesota law, whoever [(operates) (is in physical control of)] [(an off-highway motorcycle) (off-road vehicle)] within this state or on the ice of any boundary water, when the person is under the influence of an intoxicating substance knowing or having reason to know the substance has the capacity to cause impairment is guilty of a crime.

COMMENT

Minn. Stat. § 169A.20, subd. 1c(3).

CRIMJIG 29.117

OPERATING AN OFF-HIGHWAY MOTORCYCLE/ OFF-ROAD VEHICLE WHILE UNDER THE INFLUENCE OF AN INTOXICATING SUBSTANCE—ELEMENTS *[Retitled]*

Replace current Jury Instruction with the following new Title, Text, Footnote, and Comment:

The elements of this crime are:

First, the defendant ((drove) (operated) (was in physical control of)) ((an off-highway motorcycle) (off-road vehicle)).

["Off-highway motorcycle" means a motorized, off-highway vehicle traveling on two wheels and having a seat or saddle designed to be straddled by the operator and handlebars for steering control, including a vehicle that is registered under chapter 168 for highway use if it is also used for off-highway operation on trails or unimproved terrain.][1]

["Off-road vehicle" means a motor-driven recreational vehicle capable of cross-country travel on natural terrain without benefit of a road or trail. Off-road vehicle does not include a snowmobile; an all-terrain vehicle; a motorcycle; a watercraft; a farm vehicle being used for farming; a vehicle used for military, fire, emergency, or law enforcement purposes; a construction or logging vehicle used in the performance of its common function; a motor vehicle owned by or operated under contract with a utility, whether publicly or privately owned, when used for work on utilities; a commercial vehicle being used for its intended purpose; snow-grooming equipment when used for its intended purpose; or an aircraft.][2]

["To operate" means to perform any act that causes a vehicle to function or controls the functioning of a vehicle.][3]

[A person is in "physical control" of a vehicle when

the person is present in a vehicle and is in a position to either direct the movement of the vehicle or keep the vehicle in restraint. It is not necessary for the engine to be running in order for a person to be in physical control of a vehicle.]

Second, at the time the defendant was ((driving) (operating) (in physical control of)) ((an off-highway motorcycle) (off-road vehicle)), the defendant was under the influence of an intoxicating substance.

An "intoxicating substance" means a drug or chemical that, when introduced into the human body, impairs the central nervous system or the human audio, visual, or mental processes. The term does not include alcohol or controlled substances.[4] [________ is not a controlled substance.]

["Drug" means all medicinal substances and preparations, biological products, other than blood or blood components, all substances and preparations intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals; and all substances and preparations, other than food, intended to affect the structure or any function of the bodies of humans or other animals.][5]

[The term "drug" also means any compound, substance, or derivative that, when introduced into the body, induces an effect similar to that of ________,[6] regardless of whether the substance is marketed for the purpose of human consumption.][7]

["Chemical" means all medicinal or industrial substances, whether simple or compound, or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin.][8]

If a person ingests a substance and is not influenced by the substance, this element has not been proven. If, as a result of ingesting the substance, the person's ability or capacity to (drive) (operate) (be in physical control of) (an

off-highway motorcycle) (off-road vehicle) is impaired, then the person is under the influence of that substance.

There is no set standard as to the quantity of a substance a person must ingest before being regarded as "under the influence." When a person is so affected by the substance that the person does not possess that clearness of intellect and control of (himself) (herself) as (he) (she) otherwise would have, that person is "under the influence."[9]

Third, the defendant knew or had reason to know the intoxicating substance had the capacity to cause impairment.

"To know" requires only that the actor believes that the specified fact exists.

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

[Insert appropriate elements from CRIMJIG 29.20 Aggravating Factors if applicable. Note that under *State v. Davidson*, 351 N.W.2d 8 (Minn. 1984), the defendant may stipulate to any prior convictions and remove that element from the jury's consideration.]

COMMENT

Minn. Stat. § 169A.20, subd. 1c(3).

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[1] Minn. Stat. § 84.787, subd. 7.

[2] Minn. Stat. § 84.797, subd. 7.

[3] *State v. Henderson*, 907 N.W.2d 623 (Minn. 2018) (holding term "operating" in Minn. Stat. § 609.2113, subd. 1, refers to any act that causes a motor vehicle to function or controls the functioning of a motor vehicle, including the act of a passenger grabbing the steering wheel of a moving vehicle).

[4] Minn. Stat. § 169A.03, subd. 11a.

[5] Minn. Stat. § 151.01, subd. 5.

[6] Insert name of one or more substance(s) listed in Schedules I or II. *See* Minn. Stat. § 152.02, subds. 2, 3; Minn. Rules 6800.4210, .4220.

[7] Minn. Stat. § 151.01, subd. 5.

[8] Minn. Stat. § 151.01, subd. 8.

[9] *See State v. Stark*, 363 N.W.2d 53 (Minn. 1985); *State v. Graham*, 222 N.W. 909 (Minn. 1929).

CRIMJIG 29.124

OVERTAKING AND PASSING A VEHICLE STOPPED AT A CROSSWALK TO PERMIT A PEDESTRIAN TO CROSS A ROADWAY—DEFINED *[New]*

Under Minnesota law, when any vehicle is stopped at a marked crosswalk or at an intersection with no marked crosswalk to permit a pedestrian to cross the roadway, a driver of any other vehicle approaching from the rear that overtakes and passes the stopped vehicle is guilty of a crime.

COMMENT

Minn. Stat. § 169.21, subd. 2(b).

CRIMJIG 29.125

OVERTAKING AND PASSING A VEHICLE STOPPED AT A CROSSWALK TO PERMIT A PEDESTRIAN TO CROSS A ROADWAY—ELEMENTS *[New]*

The elements of overtaking and passing a vehicle stopped at a crosswalk to permit a pedestrian to cross a roadway are:

First, a vehicle was stopped at a marked crosswalk or at an intersection with no marked crosswalk to permit a pedestrian to cross the roadway. "Vehicle" means a device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices used exclusively upon stationary rails or tracks.

Second, the defendant was the driver of another vehicle approaching from the rear.

Third, the vehicle driven by the defendant overtook and passed the stopped vehicle.

Fourth, the defendant's act took place on (or about) ________ in ________ County.

COMMENT

Minn. Stat. § 169.21, subd. 2(b).

CHAPTER 31

GAMBLING CRIMES

CRIMJIG 31.34

GAMBLING FRAUD—DEFINED *[Retitled]*

Replace the current Jury Instruction and Comments with the following text and Comments:

Under Minnesota law, whoever:

[1] knowingly claims a lawful gambling prize using altered or counterfeited gambling equipment

[2] knowingly claims a lawful gambling prize by means of fraud, deceit, or misrepresentation

[3] manipulates any form of lawful gambling or tampers with any gambling equipment with intent to influence the outcome of a game or the receipt of a prize

[4] knowingly tampers with or attempts to alter any component or device used in the conduct or play of electronic pull-tabs or electronic linked bingo (as authorized under Chapter 349) or attempts to convert legal gambling into illegal gambling at a licensed establishment (under chapter 340A)

[5] knowingly has unauthorized possession of an electronic pull-tab device, an electronic linked bingo device, or other components used in the conduct of electronic pull-tabs or electronic linked bingo

[6] knowingly places or uses false information on a prize receipt or any other form approved for use by the gambling control board or the alcohol and gambling

enforcement division of the Department of Public Safety

is guilty of a crime.

COMMENT

Minn. Stat. § 609.763.

CRIMJIG 31.35

GAMBLING FRAUD—ELEMENTS *[Retitled]*

Replace the current Jury Instruction and Comments with the following text and Comments:

The elements of this crime are:

[1] First, the defendant knowingly[1] claimed a lawful gambling prize.

Second, the defendant did so using (altered) (or) (counterfeited) gambling equipment.

[2] First, the defendant knowingly claimed a lawful gambling prize.

Second, the defendant did so by means of fraud, deceit, or misrepresentation.

[3] First, the defendant (manipulated a form of lawful gambling) (tampered with gambling equipment).

Second, defendant did so with intent to influence the outcome of a game or the receipt of a prize.

[4] First, the defendant knowingly (tampered with) (or) (attempted to alter) any component or device used in the conduct or play of (electronic pull-tabs) (electronic linked bingo).

[5] First, the defendant knowingly attempted to convert legal gambling into illegal gambling at a licensed establishment.

[6] First, the defendant knowingly had unauthorized possession of an electronic (pull-tab device) (linked bingo device) or other component used in the conduct of (electronic pull-tabs) (electronic linked bingo).

[7] First, the defendant knowingly (placed) (or) (used) false information on a (prize receipt) (form approved for

use by the gambling control board or the alcohol and gambling enforcement division of the Department of Public Safety).

(Second) (Third), the defendant's act(s) occurred on or about ________, in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

If you find the defendant guilty, you have (an) additional issue(s) to determine, and (it) (they) will be put to you in the form of (a) question(s) on the verdict form.[2] The question(s) (is) (are):

> **Was the dollar amount involved in the defendant's act more than $500?**
>
> **Was the dollar amount involved in the defendant's act more than $2,500?**

[For each question:] If you unanimously find the fact has been proven beyond a reasonable doubt, the answer is "yes." Otherwise, you must answer "no."

COMMENT

Minn. Stat. § 609.763.

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[1] Although the statute does not explicitly require "knowing" possession, the law imposes a *mens rea* requirement on any gross misdemeanor or felony-level charge. *See State v. Ndikum*, 815 N.W.2d 816 (Minn. 2012).

[2] Special verdict forms should include only the dollar thresholds that correspond to the crime(s) charged in the complaint or permitted by the court as a lesser-included offense under Minn. Stat. § 609.04.

CHAPTER 32

WEAPONS CRIMES

CRIMJIG 32.02

USE/POSSESSION OF DANGEROUS WEAPON—ELEMENTS

n. 2.

Replace Footnote two with the following text:

See Minn. Stat. § 123B.41, subd. 9 for the definition of a "nonpublic school."

CRIMJIG 32.03

DRIVE-BY SHOOTING—DEFINED

Replace the current Jury Instruction and Comments with the following text and Comments:

Under Minnesota law, whoever, while in or having just exited from a motor vehicle, recklessly discharges a firearm at or toward (an unoccupied motor vehicle) (an occupied motor vehicle) (an unoccupied building) (an occupied building) (another person) is guilty of a crime.

COMMENT

Minn. Stat. § 609.66, subd. 1e.

CRIMJIG 32.04

DRIVE-BY SHOOTING—ELEMENTS

Replace the current Jury Instruction and Comments with the following text and Comments:

The elements of this crime are:

First, the defendant was in or had just exited from a motor vehicle.

A "motor vehicle" is a self-propelled device for moving persons or property or pulling implements from one place to another, whether the device is operated on land, rails, or water, or in the air.[1]

Second, the defendant recklessly discharged a firearm at or toward (an unoccupied motor vehicle) (an unoccupied building) (an occupied motor vehicle) (an occupied building) (another person).

"Firearm" means ________.[2]

[A "building" is a structure suitable for affording shelter for human beings and includes any appurtenant or connected structure.][3]

"Recklessly" means that the defendant acted in conscious disregard of a substantial and unjustifiable risk that (he) (she) was discharging a firearm at or toward (an unoccupied motor vehicle) (an occupied motor vehicle) (an unoccupied building) (an occupied building) (another person). This means:

(1) the defendant consciously or intentionally committed an act that created a risk that the firearm would be discharged at or toward (an unoccupied motor vehicle) (an occupied motor vehicle) (an unoccupied building) (an occupied building) (another person);

(2) the risk was substantial;

(3) there was no adequate reason for taking the risk;

(4) the defendant was aware of the risk; and

(5) the defendant disregarded it.[4]

The defendant need not have intended to cause harm.

Third, the defendant's act took place on or about ________, in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 609.66, subd. 1e.

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[1] Minn. Stat. § 609.52, subd. 1.

[2] "Firearm" is not defined in Minn. Stat. § 609.66, definitional criminal statutes applicable to Minn. Stat. § 609.66, or related case law. "Firearm" is defined by Minn. Stat. § 97A.015, subd. 19, applicable to game and fish laws, as a "gun that discharges shot or a projectile by means of an explosive, a gas or compressed air," and by Minn. Stat. § 609.666, subd. 1(a), applicable to negligent storage of firearms, as "a device designed to be used as a weapon, from which is expelled a projectile by the force of any explosion or force of combustion." "Firearm" has been defined in case law relating to possession by an ineligible person as "a weapon, that is, an instrument designed for attack or defense, that expels a projectile by the action or force of gunpowder, combustion, or some other explosive force." *See State v. Glover*, 952 N.W.2d 190, 195 (Minn. 2020).

[3] Minn. Stat. § 609.581, subd. 2.

[4] *See State v. Engle*, 743 N.W.2d 592, 594–95 (Minn. 2008).

CRIMJIG 32.06

SHOOTING AT TRANSIT VEHICLE OR FACILITY—ELEMENTS

Caution: This model jury instruction is under review by the CRIMJIGS committee in light of the decision in *State v. Glover*, 952 N.W.2d 190 (Minn. 2020).

CRIMJIG 32.08

INTENTIONAL DISCHARGE OF A FIREARM—ELEMENTS

Caution: This model jury instruction is under review by the CRIMJIGS committee in light of the decision in *State v. Glover*, 952 N.W.2d 190 (Minn. 2020).

Replace current Jury Instruction with the following text, Footnote, and Comment:

The elements of intentional discharge of a firearm are:

First, the defendant discharged a firearm.

Second, the defendant acted intentionally in discharging the firearm.

Third, the discharge of the firearm was under circumstances that endangered the safety of (________) (another person).

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

Remove Footnote 1.

COMMENT

Replace current Comments with the following:

Minn. Stat. § 609.66, subd. 1a(a)(2).

CRIMJIG 32.10

RECKLESS DISCHARGE OF A FIREARM WITHIN A MUNICIPALITY—ELEMENTS

Caution: This model jury instruction is under review by the CRIMJIGS committee in light of the decision in *State v. Glover*, 952 N.W.2d 190 (Minn. 2020).

n. 1.

Replace Footnote one with the following text:

See Minn. Stat. § 123B.41, subd. 9 for the definition of a "nonpublic school."

CRIMJIG 32.12

FAILURE TO RENDER AID FROM FIREARM INJURY—ELEMENTS

Caution: This model jury instruction is under review by the CRIMJIGS committee in light of the decision in *State v. Glover*, 952 N.W.2d 190 (Minn. 2020).

CRIMJIG 32.14

FAILURE TO RENDER AID FROM FIREARM INJURY—WITNESS TO—ELEMENTS

Caution: This model jury instruction is under review by the CRIMJIGS committee in light of the decision in *State v. Glover*, 952 N.W.2d 190 (Minn. 2020).

CRIMJIG 32.16

INELIGIBLE PERSON IN POSSESSION OF A FIREARM OR AMMUNITION—DEFINED[1] *[Retitled]*

Replace the current Jury Instruction and Comments with the following text and Comments:

Under Minnesota law, an ineligible person who ships, transports, possesses, or receives a firearm or ammunition is guilty of a crime.

COMMENT

Minn. Stat. § 609.165, subd. 1b.

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[1] This instruction is to be used for charges under Minn. Stat. § 609.165, and not for charges under Minn. Stat. § 624.713.

CRIMJIG 32.17

INELIGIBLE PERSON IN POSSESSION OF A FIREARM OR AMMUNITION—ELEMENTS[1] *[Retitled]*

Replace the current Jury Instruction and Comments with the following text and Comments:

The elements of this crime are:

First, the defendant knowingly shipped, transported, possessed, or received a firearm or ammunition.

> **"To know" requires only that the defendant believes that the specified fact exists.[2]**
>
> **A "firearm" is a weapon, that is, an instrument designed for attack or defense, that expels a projectile by the action or force of gunpowder, combustion, or some other explosive force.[3]**
>
> **"Ammunition" means ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in any firearm. Ammunition does not include ornaments, curiosities, or souvenirs constructed from or resembling ammunition or ammunition components that are not operable as ammunition.[4]**
>
> **A person possesses an item if it is on the person. A person also possesses an item if it was in a place under the person's exclusive control to which other people did not normally have access, or, if found in a place to which others had access, the person knowingly exercised dominion and control over it.[5]**

[1] Second, the defendant is ineligible to possess a firearm or ammunition.

> **The parties have agreed, and therefore you must accept, that the defendant was, on all relevant dates, ineligible to possess a firearm or ammunition.[6]**

[2] Second, the defendant has been (convicted of) (adjudicated delinquent for) (convicted as an extended jurisdiction juvenile of) a crime of violence.

You are instructed that ______ is a crime of violence.[7]

Third, the defendant's act took place on or about ______, in ______ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 609.165, subd. 1b.

All references to the reason for ineligibility should be removed when the defendant stipulates to being an ineligible person.

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[1] This instruction is to be used for charges under Minn. Stat. § 609.165, and not for charges under Minn. Stat. § 624.713.

[2] Minn. Stat. § 609.02, subd. 9 (2).

[3] *See State v. Glover*, 952 N.W.2d 190, 195 (Minn. 2020) (holding distress flare launcher is not a weapon, thus not a "firearm" for the purpose of Minn. Stat. § 624.713, though it expels a projectile by explosive force). Note that "firearm" is not defined in Minn. Stat. § 609.165, definitional criminal statutes applicable to this statute, or related case law. Firearm is defined by Minn. Stat. § 97A.015, subd. 19, applicable to game and fish laws, as a "gun that discharges shot or a projectile by means of an explosive, a gas or compressed air," and by Minn. Stat. § 609.666, subd. 1(a), applicable to negligent storage of firearms, as "a device designed to be used as a weapon, from which is expelled a projectile by the force of any explosion or force of combustion."

[4] Minn. Stat. § 609.02, subd. 17.

[5] *See State v. Florine*, 226 N.W. 2d 609, 611 (Minn. 1975).

[6] The defendant is entitled to stipulate to the existence of the prior conviction. *State v. Davidson*, 351 N.W. 2d 8, 11 (Minn. 1984). Such a stipulation constitutes a waiver of jury trial on this element, and the defendant's waiver must be made personally and on the record. Under such circumstances, this option for the second element should be used.

[7] "Crimes of violence" are listed in Minn. Stat. § 624.712, subd. 5.

CRIMJIG 32.19

POSSESSION OF A PISTOL OR SEMI-AUTOMATIC MILITARY-STYLE ASSAULT WEAPON BY CHARGED INDIVIDUAL—ELEMENTS

Caution: This model jury instruction is under review by the CRIMJIGS committee in light of the decision in *State v. Glover*, 952 N.W.2d 190 (Minn. 2020).

CRIMJIG 32.20

POSSESSION OF A (FIREARM) (PISTOL) (SEMI-AUTOMATIC MILITARY-STYLE ASSAULT WEAPON) (OR) (AMMUNITION) BY AN INELIGIBLE PERSON—DEFINED[1] *[Retitled]*

Replace the current Jury Instruction and Comments with the following text and Comments:

Under Minnesota law, an ineligible person who knowingly possesses a (firearm) (pistol) (semi-automatic military-style assault weapon) (or) (ammunition) is guilty of a crime.

COMMENT

Minn. Stat. § 624.713, subd. 2.

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[1] This instruction is to be used for charges under Minn. Stat. § 624.713, and not for charges under Minn. Stat. § 609.165.

CRIMJIG 32.21

POSSESSION OF (FIREARM) (PISTOL) (SEMI-AUTOMATIC MILITARY-STYLE ASSAULT WEAPON) (OR) (AMMUNITION) BY AN INELIGIBLE PERSON—ELEMENTS[1] *[Retitled]*

Replace the current Jury Instruction and Comments with the following text and Comments:

The elements of this crime are:

First, the defendant knowingly possessed a (firearm) (pistol) (semi-automatic military-style assault weapon) (or) (ammunition).

> **"To know" requires only that the defendant believes that the specified fact exists.[2]**
>
> **A person possesses an item if it is on the person. A person also possesses an item if it was in a place under the person's exclusive control to which other people did not normally have access, or, if found in a place to which others had access, the person knowingly exercised dominion and control over it.[3]**
>
> **[A "firearm" is a weapon, that is, an instrument designed for attack or defense, that expels a projectile by the action or force of gunpowder, combustion, or some other explosive force.][4]**
>
> **[A "pistol" is a weapon designed to be fired by the use of a single hand with an overall length of less than 26 inches, or having a barrel or barrels of a length less than 18 inches in the case of a shotgun, or having a barrel of a length less than 16 inches in the case of a rifle, from which may be fired or ejected one or more solid projectiles by means of a cartridge or shell or by the action of an explosive or the igniting of a flammable explosive substance for which the propelling force is a spring, elastic band, carbon dioxide, air or other gas, or vapor. "Pistol" does not include a device firing**

or ejecting a shot measuring .18 of an inch or less in diameter and commonly known as a "BB gun," a scuba gun, a stud gun or nail gun used in the construction industry, or children's pop guns or toys.][5]

["Semi-automatic military-style assault weapon" means (________).][6]

["Ammunition" means ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in any firearm. "Ammunition" does not include ornaments, curiosities, or souvenirs constructed from or resembling ammunition or ammunition components that are not operable as ammunition.][7]

[1] Second, the defendant is ineligible to possess a (firearm) (pistol) (semi-automatic military-style assault weapon) (or) (ammunition).

The parties have agreed, and therefore you must accept, that the defendant was, on all relevant dates, ineligible to possess a (firearm) (pistol) (semi-automatic military-style assault weapon) (or) (ammunition).[8]

[2] Second, the defendant

[a] was under the age of 18 years[9] and

[i] was not in the actual presence or under the direct supervision of the parent or guardian,

[ii] was not acting for the purpose of military drill under the auspices of a legally recognized military organization and under competent supervision,

[iii] was not acting for the purpose of instruction, competition, or target practice, on a firing range approved by the chief of police or county sheriff and under direct supervision, and

[iv] had not successfully completed a course designed to teach marksmanship and pistol safety approved by the Commissioner of Natural Resources.

[b] has been convicted or adjudicated delinquent or convicted as an extended jurisdiction juvenile in this state or elsewhere for committing a crime of violence.

You are instructed that ______ is a crime of violence.[10]

[c] was or had been confined or committed in Minnesota or elsewhere in a treatment facility as mentally ill, mentally retarded, or mentally ill and dangerous to the public, has been found incompetent to stand trial or not guilty by reason of mental illness, and did not possess a certificate of a medical doctor or psychiatrist licensed in Minnesota or other satisfactory proof that the person was no longer suffering from this disability. [It is a defense to this offense that the defendant's ability to possess firearms has been restored by a judicial proceeding.]

[d] had been convicted in Minnesota or elsewhere of a misdemeanor or gross misdemeanor controlled substances crime, unless three years have elapsed since the date of conviction and, during that time, the defendant has not been convicted of any other such violation of Minnesota controlled substance law or a similar law of another state.

[e] had been committed by a judicial determination for treatment for the habitual use of a controlled substance or marijuana.[11] [It is a defense to this offense that the defendant's ability to possess firearms has been restored by judicial proceedings.]

[f] had been confined or committed to a treatment facility in Minnesota or elsewhere as chemically dependent, had not completed treatment, and had not obtained a judicial restoration of the ability to possess a firearm and ammunition.

[g] was a peace officer who had been informally admitted to a treatment facility for chemical dependency, and the officer did not possess a certificate from the head of the treatment facility discharging or provisionally discharging the officer from the treatment facility.

[h] had been charged in adult or juvenile court with committing a crime of violence, was placed in a pretrial diversion program by the court before disposition, and had not completed the diversion program, and the charge of committing the violence had not been dismissed.

[i] had been convicted of assault in the fifth degree in Minnesota or convicted in another state of committing an offense similar to assault in the fifth degree against a family or household member, unless three years had elapsed since the date of conviction, and during that time had not been convicted of any other violation of assault in the fifth degree.

[j] had been convicted in Minnesota or elsewhere of assaulting a family or household member, was found by the court to have used a firearm in any way in the commission of the assault, and was prohibited by court order from possessing a firearm.

[k] had been convicted in any court of a crime punishable by imprisonment for a term exceeding one year. [Any conviction which has been expunged, or set aside, or for which a person has been pardoned or has had civil rights restored

shall not be considered a conviction for purposes of this definition, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.][12]

[l] was a fugitive from justice as a result of having fled from any state to avoid prosecution for a crime or to avoid giving testimony in any criminal proceeding.

[m] was an unlawful user of controlled substances.

[n] had been judicially committed to a treatment facility in Minnesota or elsewhere as "mentally ill," "mentally retarded," or "mentally ill and dangerous."

[o] was an alien who was illegally or unlawfully in the United States.

[p] had been discharged from the armed forces of the United States under dishonorable conditions.

[q] had renounced the person's citizenship, having formerly been a citizen of the United States.

[r] has been convicted, in this state or any other state, of ________,[13] **a gross misdemeanor, unless three years have passed since the date of conviction and, during that time, the defendant has not been convicted of any other listed crimes.**

[s] has been convicted of a violation of (Minn. Stat. § 609.224) (assault in the fifth degree) if the court determined that the assault was against a family or household member,[14] **unless three years have elapsed since the date of conviction and, during that time, the person has not been convicted of another violation of Minn. Stat. § 609.224 (fifth degree assault) or a violation listed in section Minn. Stat. § 609.229 (crimes committed for the**

benefit of a gang); Minn. Stat. § 609.2231, subd. 4 (assault motivated by bias); Minn. Stat. § 609.225 (false imprisonment); Minn. Stat. § 609.378 (neglect or endangerment of a child); Minn. Stat. § 609.582, subd. 4 (fourth degree burglary); Minn. Stat. § 609.665 (setting a spring trap); Minn. Stat. § 609.72 (riot); or Minn. Stat. § 609.749 (stalking).

[t] was subject to an order for protection.[15]

Third, the defendant's act took place on or about ______, in ______ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 624.713, subd. 2.

All references to the reason for ineligibility should be removed when the defendant stipulates to being an ineligible person.

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[1] This instruction is to be used for charges under Minn. Stat. § 624.713, and not for charges under Minn. Stat. § 609.165.

[2] Minn. Stat. § 609.02, subd. 9(2).

[3] *State v. Florine*, 226 N.W. 2d 609, 611 (Minn. 1975).

[4] *State v. Glover*, 952 N.W.2d 190, 195 (Minn. 2020).

[5] Minn. Stat § 624.712, subd. 2.

[6] *See* Minn. Stat. § 624.712, subd. 7, for complete definition of "semi-automatic military-style assault weapon."

[7] Minn. Stat. § 609.02, subd. 17.

[8] The defendant is entitled to stipulate to the existence of the prior conviction. *State v. Davidson*, 351 N.W. 2d 8, 11 (Minn. 1984). Such a stipulation constitutes a waiver of jury trial on this element, and defendant's waiver must be made personally and on the record. Under such circumstances, this option for the second element should be used.

[9] Note the prohibition concerning a person under the age of 18 applies only to pistols and semi-automatic military-style assault weapons, but allows possession of other firearms and ammunition.

[10] "Crimes of violence" are listed in Minn. Stat. § 624.712, subd. 5.

[11] As defined in Minn. Stat. § 152.01.

[12] *See* Minn. Stat. § 624.712, subd. 10.

[13] *See* Minn. Stat. § 624.713, subd. 1(k), for a list of the applicable gross misdemeanor crimes.

[14] Minn. Stat. § 609.224, subd. 3.

[15] Either under Minn. Stat. § 260C.201, subd. 3(d), or Minn. Stat. § 518B.01, subd. 6(g).

CRIMJIG 32.24

SALE/POSSESSION OF A FIREARM SILENCER—DEFINED

Replace the current jury instruction with the following language:

Under Minnesota law, whoever (sells) (possesses) a suppressor that is not lawfully possessed under federal law is guilty of a crime.

CRIMJIG 32.25

SALE/POSSESSION OF A FIREARM SILENCER—ELEMENTS

Replace the current jury instruction with the following text, Footnote, and Comments:

The elements of (sale) (possession) of a firearm silencer are:

First, the defendant (sold) (possessed) a suppressor that was not lawfully possessed under federal law. "Suppressor" means any device for silencing, muffling, or diminishing the report of a portable firearm, including any combination of parts, designed or redesigned, and intended for use in assembling or fabricating a firearm silencer, or firearm muffler, and any part intended only for use in such assembly or fabrication.

Second, the defendant intentionally (possessed) (sold) the suppressor.

[Insert CRIMJIG 32.42 if possession is constructive.]

[Third, the defendant (sold) (possessed) the device in a (school) (park) (public housing) zone? [A "school zone" is any property owned, leased, or controlled by a school district or an organization operating a nonpublic school[1] where an elementary, middle, or secondary school, secondary vocational center, or other school providing educational services for grades one through twelve is located or used for educational purposes, or where extracurricular or co-curricular activities are regularly provided.] [A "park zone" is an area designated as a public park by the federal government, the state, a local unit of government, a park district board, or a park and recreation board in a city of the first class. Park zone includes the area within (300 feet) (or) (one city block,) (whichever distance is greater,) of the park boundary.] [A "public housing zone" is a public housing project or development administered by a local housing agency, plus the area within (300

feet of the property's boundary,) (or) (one city block,) (whichever distance is greater).]

[Third] [Fourth], the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

In cities where no grid system is present, the term "one city block" does not apply and the transaction must take place within 300 feet of the park for the statute to apply. *See State v. Estrella*, 700 N.W.2d 496 (Minn. App. 2005).

When land surrounding a public park is divided into rectangular blocks bounded by city streets, the area "within one city block . . . of the park boundary" include the entire area of block adjacent to the park. *State v. Carufel*, 783 N.W.2d 539 (Minn. 2010) (a controlled substance case). This holding would presumably also apply to a school zone or public housing zone.

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[1] *See* Minn. Stat. § 123B.41, subd. 9 for the definition of a "nonpublic school."

CRIMJIG 32.27

FURNISHING FIREARMS TO MINORS—ELEMENTS

Caution: This model jury instruction is under review by the CRIMJIGS committee in light of the decision in *State v. Glover*, 952 N.W.2d 190 (Minn. 2020).

CRIMJIG 32.36

POSSESSION OF A PISTOL WITHOUT A PERMIT—DEFINED

Replace the current Jury Instruction and Comments with the following text and Comments:

Under Minnesota law, whoever, other than a peace officer, knowingly carries, holds, or possesses a pistol in a public place or public area, without having first obtained a permit to carry the pistol, is guilty of a crime.

COMMENT

Minn. Stat. § 624.714, subd. 1a.

CRIMJIG 32.37

POSSESSION OF A PISTOL WITHOUT A PERMIT—ELEMENTS

Replace the current Jury Instruction and Comments with the following text and Comments:

The elements of this crime are:

First, the defendant knowingly[1] carried, held, or possessed a pistol (in a motor vehicle) (in a snowmobile) (in a boat) (on or about the defendant's clothing or person or otherwise in the defendant's possession or control) in a public place or public area.

"Knowingly" requires only that the defendant believed that the specified fact existed.[2]

A person possesses a pistol if it is on (his) (her) person. A person also possesses a pistol if it is in a place under the person's exclusive control to which other people do not normally have access, or, if found in a place to which others have access, the person knowingly exercises dominion and control over it.[3]

[A pistol is carried "on or about" one's person or clothing if there is a physical nexus between the person and the pistol or if the pistol is carried within arm's reach of the person.][4]

"Public place" means property owned, leased, or controlled by a governmental unit and private property that is regularly and frequently open to or made available for use by the public in sufficient numbers to give clear notice of the property's current dedication to public use, but does not include: a person's dwelling house or premises, the place of business owned or managed by the person, or land possessed by the person; a gun show, gun shop, or hunting or target shooting facility; or the woods, fields, or waters of this state where the person is present lawfully for the

> purpose of hunting or target shooting or other lawful activity involving firearms.[5]

[Second, at the time of the alleged offense, the defendant was not (INSERT activity defined by statute as lawful without a permit to carry.)][6]

(Second) (Third), the defendant was not a peace officer.

> "Peace officer" means an employee or an elected or appointed official of a political subdivision or law enforcement agency who is licensed by the Board of Peace Officer Standards and Training, charged with the prevention and detection of crime and the enforcement of the general criminal laws of the state and who has the full power of arrest [, and also includes the Minnesota State Patrol, agents of the Division of Alcohol and Gambling Enforcement, state conservation officers, Metropolitan Transit police officers, Department of Corrections Fugitive Apprehension Unit officers, and Department of Commerce Fraud Bureau Unit officers, and the statewide coordinator of the Violent Crime Coordinating Council, and includes a peace officer who is employed by a law enforcement agency of a federally recognized tribe, as defined in United States Code, title 25, section 450b(e), and who is licensed by the Board of Peace Officer Standards and Training].[7]

(Third) (Fourth), the defendant was not the holder of a permit issued or recognized by Minnesota to carry the pistol.

> [Minnesota (recognizes) (does not recognize) permits issued by ________.][8]

(Fourth) (Fifth), the defendant's act took place on or about ________, in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty.

If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

If you find the defendant guilty, you have an additional issue to determine, and it will be put to you in the form of a question on the verdict form.[9] The question is:

Was the defendant previously convicted of a violation of this section?

If you unanimously find the fact has been proven beyond a reasonable doubt, the answer is "yes." Otherwise, you must answer "no."

COMMENT

Minn. Stat. § 624.714, subd. 1a.

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[1] In *State v. Ndikum*, 815 N.W.2d 816, 822 (Minn. 2012), the Supreme Court held that knowledge of possession is an element of the crime of possession of a pistol in a public place in violation of Minn. Stat. § 624.714, subd. 1a.

[2] Minn. Stat. § 609.02, subd. 9(2).

[3] *See State v. Florine*, 226 N.W. 2d 609, 611 (Minn. 1975).

[4] *See State v. Prigge*, 907 N.W.2d 635, 640 (Minn. 2018) (construing the phrase "on or about the person's clothes or person" in section 624.7142).

[5] Minn. Stat. § 624.7181, subd. 1(c).

[6] Exceptions to the permit requirement are found at Minn. Stat. § 624.714, subds. 9 and 13. In those cases in which the defendant raises a defense under those provisions, it is the burden of the prosecution to prove beyond a reasonable doubt those provisions do not apply. Note that "place of business," where a person may carry a handgun without a permit, means a fixed place of business. *See State v. Palmer*, 636 N.W.2d 810, 813 (Minn. Ct. App. 2001) (refusing to apply the exception to appellant's car, where he spent the majority of his workdays as a courier).

[7] Minn. Stat. § 626.84, subd. 1.

[8] *See* Minn. Stat. § 624.714, subd. 16 (providing for recognition of permits from other states).

[9] This special interrogatory should be used only if the defendant is charged with an offense enhanced by prior conviction. The defendant is entitled to stipulate to the existence of a prior conviction. *State v. Davidson*, 351 N.W.2d 8, 11 (Minn. 1984). Such a stipulation constitutes a waiver of jury trial on this element, and the defendant's waiver must be made personally and on the record. If the defendant has stipulated to the prior conviction, that information should not be presented to the jury, and the special interrogatory should not be used.

CRIMJIG 32.41

FIREARM SERIAL NUMBER REMOVED—ELEMENTS

Caution: This model jury instruction is under review by the CRIMJIGS committee in light of the decision in *State v. Glover*, 952 N.W.2d 190 (Minn. 2020).

CRIMJIG 32.45

CARRYING A PISTOL IN A PUBLIC PLACE WHILE (UNDER THE INFLUENCE OF A CONTROLLED SUBSTANCE) (UNDER THE INFLUENCE OF ALCOHOL)(HAS A BLOOD ALCOHOL CONCENTRATION OF 0.10 OR MORE)(HAS A BLOOD ALCOHOL CONCENTRATION OF LESS THAN 0.10 BUT MORE THAN 0.04)—DEFINED

Replace current Jury Instruction with the following Text and Comment:

Under Minnesota law, whoever knowingly carries a pistol on or about the person's clothes or person in a public place

[1] while under the influence of a controlled substance

[2] while under the influence of a combination of controlled substances or a combination of a controlled substance and alcohol

[3] while under the influence of an intoxicating substance, knowing or having reason to know the substance has the capacity to cause impairment,

[4] while under the influence of alcohol

[5] while having a blood alcohol concentration of 0.10 or more

[6] while having a blood alcohol concentration of less than 0.10 but more than 0.04 is guilty of a crime.

COMMENT

Minn. Stat. § 624.7142, subd. 1(1)–(6).

CRIMJIG 32.46

CARRYING A PISTOL IN A PUBLIC PLACE WHILE (UNDER THE INFLUENCE OF A CONTROLLED SUBSTANCE) (UNDER THE INFLUENCE OF ALCOHOL)(HAS A BLOOD ALCOHOL CONCENTRATION OF 0.10 OR MORE)(HAS A BLOOD ALCOHOL CONCENTRATION OF LESS THAN 0.10 BUT MORE THAN 0.04)—ELEMENTS

Replace Current Instruction and Comment with the following text:

The elements of this crime are:

First, the defendant knowingly carried a pistol on or about (his) (her) clothes or person.[1]

A pistol is carried "on or about" one's clothes or person if there is a physical nexus between the person and the pistol or if the pistol is carried within arm's reach of the person.[2]

Second, at the time of carrying pistol on or about (his) (her) clothes or person, the defendant was in a public place.

Third, at the time, the defendant (was) (had)

[1] under the influence of a controlled substance.[3] ________ is a controlled substance. As part of this element the State must prove beyond a reasonable doubt that the substance in question was, in fact, ________.

If a person ingests a substance and is not influenced by the substance, this element has not been proven. If, as a result of ingesting the substance, the person's ability or capacity is impaired, then this element has been proven.

There is no set standard as to the quantity of a substance a person must ingest before being regarded as "under the influence." When a person is so affected by the substance that the person does not possess that clear-

ness of intellect and control of (himself) (herself) as (he) (she) otherwise would have, that person is "under the influence."[4]

[2] under the influence of a combination of controlled substances or a combination of a controlled substance[5] and alcohol. ________ is a controlled substance. As part of this element the State must prove beyond a reasonable doubt that the substance in question was, in fact, ________.

If a person ingests (a combination of controlled substances) (a combination of a controlled substance and alcohol) and is not influenced by it, this element has not been proven. If, as a result of ingesting the (combination of controlled substances) (combination of a controlled substance and alcohol), the person's ability or capacity is impaired, then this element has been proven.

There is no set standard as to the quantity of (a combination of controlled substances) (a combination of a controlled substance and alcohol) a person must ingest before being regarded as "under the influence." When a person is so affected by the (combination of controlled substances) (combination of a controlled substance and alcohol) that the person does not possess that clearness of intellect and control of (himself) (herself) as (he) (she) otherwise would have, that person is "under the influence."[6]

[3] under the influence of an intoxicating substance.

An "intoxicating substance" means a drug or chemical that, when introduced into the human body, impairs the central nervous system or the human audio, visual, or mental processes. The term does not include alcohol or controlled substances.[7] [________ is not a controlled substance.]

["Drug" means all medicinal substances and preparations, biological products, other than blood or blood components, all substances and preparations intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals; and all substances and preparations, other than food, intended to affect the structure or any function of the bodies of humans or other animals.][8]

[The term "drug" also means any compound, substance, or derivative that, when introduced into the body, induces an effect similar to that of ________,[9] regardless of whether the substance is marketed for the purpose of human consumption.][10]

["Chemical" means all medicinal or industrial substances, whether simple or compound, or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin.][11]

If a person ingests a substance and is not influenced by the substance, this element has not been proven. If, as a result of ingesting the substance, the person's ability or capacity is impaired, then this element has been proven.

There is no set standard as to the quantity of a substance a person must ingest before being regarded as "under the influence." When a person is so affected by the substance that the person does not possess that clearness of intellect and control of (himself) (herself) as (he) (she) otherwise would have, that person is "under the influence."[12]

[4] under the influence of alcohol.

If a person ingests alcohol and is not influenced by it, this element has not been proven. If, as a result of ingesting the alcohol, the person's ability or capacity is impaired, then this element has been proven.

There is no set standard as to the quantity of alcohol a person must ingest before being regarded as "under the influence." When a person is so affected by the alcohol that the person does not possess that clearness of intellect and control of (himself) (herself) as (he) (she) otherwise would have, that person is "under the influence."[13]

[5] a blood alcohol concentration of 0.10 or more.

[6] a blood alcohol concentration of less than 0.10 but more than 0.04.

[Fourth, the defendant knew or had reason to know the intoxicating substance had the capacity to cause impairment.]

"To know" requires only that the actor believes that the specified fact exists.

[Fourth] [Fifth], the defendant's act took place on (or about) ______ in ______ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 624.7142, subd. 1(1)–(6).

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[1] In *State v. Ndikum*, 815 N.W.2d 816 (Minn. 2012), the Supreme Court held that knowledge of possession is an element of the crime of possession of a pistol in a public place in violation of Minn. Stat. § 624.714, subd. 1a.

[2] *State v. Prigge*, 907 N.W.2d 635 (Minn. 2018).

[3] *See* Minn. Stat. § 152.01, subd. 4, for the definition of "controlled substance."

[4] *See State v. Stark*, 363 N.W.2d 53 (Minn. 1985); *State v. Graham*, 222 N.W. 909 (Minn. 1929).

[5] *See* Minn. Stat. § 152.01, subd. 4, for the definition of "controlled substance."

[6] *See State v. Stark*, 363 N.W.2d 53 (Minn. 1985); *State v. Graham*, 222 N.W. 909 (Minn. 1929).

[7] Minn. Stat. § 169A.03, subd. 11a.

[8] Minn. Stat. § 151.01, subd. 5.

[9] Insert name of one or more substance(s) listed in Schedules I or II. *See* Minn. Stat. § 152.02, subds. 2, 3; Minn. Rules 6800.4210, .4220.

[10] Minn. Stat. § 151.01, subd. 5.

[11] Minn. Stat. § 151.01, subd. 8.

[12] *See State v. Stark*, 363 N.W.2d 53 (Minn. 1985); *State v. Graham*, 222 N.W. 909 (Minn. 1929).

[13] *See State v. Stark*, 363 N.W.2d 53 (Minn. 1985); *State v. Graham*, 222 N.W. 909 (Minn. 1929).

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168A.1501(1)(d)	16.50
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169A.20(1b)(4)	29.84, 29.85
169A.20(1c)(3)	29.116, 29.117
169A.20(1c)(4)	29.110, 29.111
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169A.51	29.21, 29.22
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243.166(1b)(a)(1), (2)	12.100
243.166(1b)(a)(1), (2), or (3)	12.100
243.166(1b)(b)(3)	12.100
243.166(1b)(d)(1)	12.100
243.166(3)(b)	12.100
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609.321(10)	12.59, 12.67, 12.67.1, 12.67.2
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609.341(12)	12.03, 12.03.1, 12.03.2, 12.03.3, 12.03.4, 12.03.5, 12.05, 12.07, 12.09, 12.11, 12.21, 12.21.1, 12.23, 12.25, 12.25.1, 12.25.2, 12.27, 12.29, 12.31, 12.121, 12.125, 12.129, 12.133, 12.137, 13.72
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609.341(26)	12.129, 12.131, 12.133, 12.135, 13.74
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609.341(17 to 18)	12.09, 12.13, 12.13.1, 12.13.2, 12.13.3, 12.13.4, 12.13.5, 12.14.1, 12.15.1, 12.27, 12.36.1, 12.37.1, 12.38.1, 12.40, 12.40.1, 12.40.2, 12.46, 12.123, 12.131, 13.72
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609.342(1)(b)	12.02.1, 12.03.1, 12.04, 12.05
609.342(1)(c)	12.02, 12.03
609.342(1)(c)(i) to (ii)	12.02.2, 12.02.3, 12.03.2, 12.03.3
609.342(1)(d)	12.02.1, 12.02.4, 12.03.1, 12.03.4
609.342(1)(e)	12.02.5, 12.03.5
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609.342(1)(f)	12.02.5, 12.03.5
609.342(1)(g)	12.10, 12.11
609.342(1)(h)	12.08, 12.09
609.342(1a)(a)	12.02, 12.03
609.342(1a)(b)	12.02.1, 12.03.1
609.342(1a)(c)(i) to (ii)	12.02.2, 12.02.3, 12.03.2, 12.03.3
609.342(1a)(d)	12.02.5, 12.03.5
609.342(1a)(e)	12.06, 12.07
609.342(1a)(f)	12.04, 12.05
609.342(1a)(g)	12.10, 12.11
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609.342(1a)(i)	12.02.4, 12.03.4
609.343	12.13.1, 12.13.5, 12.56, 12.137
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609.343(1)(b)	12.12.1, 12.13.1, 12.15, 12.15.1
609.343(1)(c)	12.12, 12.13
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609.343(1)(d)	12.12.1, 12.12.4, 12.13.1, 12.13.4
609.343(1)(e)	12.12.5, 12.13.5
609.343(1)(e)(i)	12.12.2, 12.13.2
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609.343(1)(h)	12.16, 12.17
609.343(1a)(a)	12.12, 12.13
609.343(1a)(b)	12.12.1, 12.13.1
609.343(1a)(c)(i) to (ii)	12.12.2, 12.12.3, 12.13.2, 12.13.3
609.343(1a)(d)	12.12.5, 12.13.5
609.343(1a)(e)	12.14, 12.14.1
609.343(1a)(f)	12.15, 12.15.1
609.343(1a)(g)	12.18, 12.19
609.343(1a)(h)	12.16, 12.17
609.343(1a)(i)	12.12.4, 12.13.4
609.344	12.56, 12.137
609.344(1)(a)	12.20, 12.21, 12.24, 12.25
609.344(1)(b)	12.22, 12.23, 12.24.1, 12.25.1
609.344(1)(c)	12.20, 12.20.1, 12.21, 12.21.1
609.344(1)(d)	12.22, 12.23, 12.30, 12.31, 12.120, 12.121, 12.128, 12.129, 12.132, 12.133
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609.344(1)(o)	12.120, 12.121
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609.344(1a)(b)	12.24.1, 12.25.1
609.344(1a)(c)	12.20, 12.21
609.344(1a)(d)	12.22, 12.23
609.344(1a)(e)	12.24.2, 12.25.2
609.344(1a)(f)	12.28, 12.29
609.344(1a)(g)	12.26, 12.27
609.344(1a)(h)	12.20.1, 12.21.1
609.344(1a)(i)	12.30, 12.31, 12.120, 12.121, 12.128, 12.129
609.345	12.56, 12.137
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609.345(1)(b)	12.38, 12.38.1, 12.39.1, 12.40.1
609.345(1)(c)	12.36, 12.36.1, 12.37, 12.37.1
609.345(1)(d)	12.38, 12.38.1, 12.45, 12.46, 12.122, 12.123, 12.130, 12.131, 12.134, 12.135
609.345(1)(e)	12.39.2, 12.40.2
609.345(1)(f)	12.43, 12.44
609.345(1)(h), (i), (j), (k), (l), (m), (n), (p)	12.45, 12.46
609.345(1)(j)	12.46
609.345(1)(n)	12.46
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